

Page 1

1 FOR THE DISTRICT OF MASSACHUSETTS

2 ANNE BRUMBAUGH, GARY L. HARMON)

3 and RANDY K. GRIFFIN,)

4)

5 Plaintiffs,) Civil Action
6 v.) No. 3:04-CV-30022 (MAP)

7 WAVE SYSTEMS CORPORATION,)

JOHN E. BAGALAY, JR., STEVEN K.)

8 SPRAGUE and GERARD T. FEENEY,)

9 Defendants.)

10 DEPOSITION

11 OF

12 RANDY KEITH GRIFFIN

13 DATED: MAY 9, 2006

14 TIME: 9:30 A.M.

15 PLACE: Marriott Greensboro

16 304 Green Street,

17 Greensboro, North Carolina

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1		1	
2		2	E X H I B I T S
3	COUNSEL FOR THE PLAINTIFF:	3	EXHIBIT DESCRIPTION PAGE
4	KAREN REILLY, ESQ.	4	25 Plaintiffs' Response and Objections 42
5	TODD M. MOSSER, ESQ.	5	to Defendants' First Request for
6	SCHIFFRIN & BARROWAY, LLP	6	Production of Documents
7	280 King of Prussia Road	7	TD Waterhouse Trade Confirmations 45
8	Radnor, PA 19087	8	for Randy Keith Griffin
9	Telephone: (610) 822-2212	9	TD Waterhouse Account Statement 47
10	Facsimile: (610) 667-7056	10	for Randy K. Griffin, II
11	kreilly@sbclasslaw.com	11	Certification of Named Plaintiff 84
12	tmosser@sbclasslaw.com	12	Pursuant to Federal Securities Laws
13	COUNSEL FOR THE DEFENDANT:	13	for Randy K. Griffin
14	SARA A. MARTIN, ESQ.	14	
15	BINGHAM McCUTCHEN, LLP	15	*****
16	150 Federal Street	16	
17	Boston, MA 02110-1726	17	
18	Telephone: (617) 951-8653	18	
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21		21	
22		22	
23		23	
24		24	
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1		1	
2		2	
3	CONTENTS	3	
4		4	On May 9, 2006, commencing at 9:30 a.m., the
5	PAGE	5	deposition of RANDY KEITH GRIFFIN, was taken pursuant
6	DIRECT EXAMINATION BY MS. MARTIN	5	to notice and according to the Massachusetts Rules of
7	CROSS-EXAMINATION BY MS. REILLY	109	5 Civil Procedure, on behalf of Defendants, at the
8			6 Marriott Greensboro Downtown, 304 Green Street,
9			7 Greensboro, North Carolina.
10		8	PROCEEDINGS
11		9	MS. MARTIN: Could you please swear in
12		10	the witness.
13		11	(WITNESS ADMINISTERED OATH BY THE STENOGRAPHER)
14		12	MS. MARTIN: Okay. And the parties
15		13	have just stipulated that all objections except as to
16		14	form will be reserved until the time of trial and
17		15	that the witness is going to read and sign the
18		16	deposition and we'll make an effort to do so on an
19		17	expedited basis.
20		18	MS. REILLY: That's correct.
21		19	DIRECT EXAMINATION
22		20	(BY MS. MARTIN)
23		21	Q. Okay. Good morning. My name is Sara
24		22	Martin.
		23	A. Good morning.
		24	Q. And I represent the Defendants in this

2 (Pages 2 to 5)

Page 6

1 case. Have we met before?
 2 A. No, ma'am.
 3 Q. Okay. And could you please state your full
 4 name and address for the record, please?
 5 A. Randy Keith Griffin; 7524 Green Meadow
 6 Drive, Tobaccoville, North Carolina.
 7 Q. Okay. And do you have any other
 8 addresses --
 9 A. Yes.
 10 Q. -- other than that one?
 11 A. Yes.
 12 Q. What are your other addresses?
 13 A. Post Office Box 215, King, North Carolina.
 14 Q. Okay. And do you have any other homes?
 15 A. Not primary residence, no.
 16 Q. Okay. But do you have any other homes
 17 where you have an address --
 18 A. No.
 19 Q. -- where you receive mail?
 20 A. No.
 21 Q. And have you ever had your deposition taken
 22 before?
 23 A. No.
 24 Q. Okay. Well, let me give you a quick

1 Q. If you need to take a break, please let me
 2 know.
 3 A. (Witness moves head up and down.)
 4 Q. And are you taking any medications today
 5 that would prevent you from hearing or understanding
 6 or responding to questions?
 7 A. No.
 8 Q. Okay. What did you do to prepare for your
 9 deposition today?
 10 A. All the information that I got from my
 11 legal counsel, I've been reading it and studying the
 12 case and, of course, looking back on any other
 13 information I may have received.
 14 Q. Okay. Did you meet with your counsel --
 15 A. Yes.
 16 Q. -- in preparation for today?
 17 A. Yes.
 18 Q. And please wait until I'm finished after --
 19 A. I'm sorry.
 20 Q. Just a good reminder.
 21 And on how many occasions did you meet with
 22 your counsel prior to today to prepare for your
 23 deposition?
 24 A. One.

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1 explanation of how the deposition process works.
 2 I'm going to ask questions. Please listen
 3 and answer carefully and truthfully. Everything you
 4 say will be taken down by the court reporter; so if
 5 you can limit your responses to verbal responses
 6 versus --
 7 A. Um-hum.
 8 Q. -- hand gestures, nods, it will make a
 9 cleaner record.
 10 Please also wait until I'm finished asking
 11 the question before you begin to answer.
 12 A. (Witness moves head up and down.)
 13 Q. And remember that your responses are given
 14 under oath and have the same force and effect as if
 15 sworn in a court of law before a judge.
 16 A. (Witness moves head up and down.)
 17 Q. If you don't understand a question that I
 18 ask, please ask me to rephrase the question, let me
 19 know that you don't understand it, and I'll try to
 20 rephrase it so that you do understand it.
 21 A. (Witness moves head up and down.)
 22 Q. If you answer a question, I'll assume that
 23 you understood it.
 24 A. Um-hum.

1 Q. Okay. And was that yesterday?
 2 A. Yes.
 3 Q. Okay. And approximately how long did you
 4 meet with your counsel yesterday?
 5 A. Two hours and 15 minutes.
 6 Q. Okay. And did you review any documents
 7 during that meeting?
 8 A. Yes.
 9 Q. Which documents did you review?
 10 A. We looked back over several of them; the
 11 complaints initial, and then, of course, all of the
 12 paperwork that they've done during this period of
 13 time.
 14 Q. Okay. When you say, "all of the paperwork
 15 that they've done during this period of time," do you
 16 remember specifically any of the documents that you
 17 looked at?
 18 A. Well, mainly where the judge has let the
 19 case go on. Not any specific that I can recall, but
 20 I mean, certain ones.
 21 Q. Okay. So other than the complaint and
 22 other documents that your attorneys prepared or filed
 23 in this action, did you look at any other documents?
 24 A. No.

3 (Pages 6 to 9)

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1 Q. Okay. Could you -- oh, did you take any
 2 notes during this session with your counsel?
 3 A. Yes.
 4 Q. Okay. Do you have those notes with you
 5 today?
 6 A. No. I turned them over to my counsel.
 7 Q. Okay.
 8 MS. MARTIN: And do you have those
 9 notes with you?
 10 MS. REILLY: Yes. But they're
 11 privileged.
 12 MS. MARTIN: The notes that he took
 13 during your session?
 14 MS. REILLY: Yes, because they
 15 represent conversations with counsel.
 16 Q. Okay. Could you please state your date of
 17 birth for the record, please?
 18 A. 2-7-1952.
 19 Q. Okay. And are you married, sir?
 20 A. Yes.
 21 Q. Okay. And what's your wife's name?
 22 A. Norma Jean Griffin.
 23 Q. Okay. And do you have any children?
 24 A. Yes.

1 Q. All right. What do your children do?
 2 A. My oldest son is a insurance manager for
 3 Progressive Insurance over adjusters. And my
 4 youngest son, he and his wife own their own beauty
 5 supply business.
 6 Q. And is your wife employed?
 7 A. She's retired.
 8 Q. What did she do prior to retirement?
 9 A. She -- she was a teacher's aide.
 10 Q. Are you related to or have any acquaintance
 11 with any of the lawyers involved in this case?
 12 A. No.
 13 Q. Okay. And are you related to or have any
 14 acquaintance with anyone from the law firms of
 15 Schiffrian & Barroway --
 16 MS. REILLY: Schiffrian & Barroway.
 17 Q. -- Schiffrian & Barroway or Gilman & Pastor?
 18 A. No.
 19 Q. Do you know who Steven Sprague is?
 20 A. Yes.
 21 Q. Who is Steven Sprague?
 22 A. He is a CEO of Wave.
 23 Q. Okay. And do you know who Gerald Feeney
 24 is?

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1 Q. How many children do you have?
 2 A. Two.
 3 Q. And what are their names?
 4 A. Randy Keith and Michael Scott.
 5 Q. Okay. And how old are Randy Keith and
 6 Michael Scott?
 7 A. Thirty-four is Randy, and thirty is
 8 Michael.
 9 Q. Okay. And do you have any family members
 10 who live in Massachusetts?
 11 A. No.
 12 Q. Okay. Do you have any family members that
 13 are affiliated in any way with Wave Systems?
 14 A. No.
 15 Q. Okay. Are you in good health?
 16 A. Yes.
 17 Q. Okay. And are your spouse or children in
 18 the securities industry?
 19 A. No.
 20 Q. Okay. Were they ever?
 21 A. No.
 22 Q. Are any of your family members in the
 23 computer hardware or software industry?
 24 A. No.

1 A. CFO of Wave.
 2 Q. Okay. Beginning with your graduation from
 3 high school, could you please give me a brief
 4 description of your educational background, please?
 5 A. Well, when I finished high school, I took
 6 off a number of years and started college at the age
 7 of 31 and graduated when I was 39.
 8 Q. And where did you attend college?
 9 A. It was a small Baptist college,
 10 Gardner-Webb University in Boiling Springs, North
 11 Carolina.
 12 Q. Okay. And what was your major in college?
 13 A. I had an associate of computer science and
 14 a major in business management.
 15 Q. Okay. And did you graduate from college?
 16 A. Yes.
 17 Q. Okay. And what year did you graduate?
 18 A. '91.
 19 Q. Okay. And did you -- have you had any
 20 graduate level education since then?
 21 A. No.
 22 Q. Okay. And have you taken any courses since
 23 you graduated from college?
 24 A. No.

4 (Pages 10 to 13)

Page 14

1 Q. Okay. Do you have any education in
 2 securities analysis or training in evaluating
 3 securities?
 4 A. No.
 5 Q. Okay. And are you presently employed, sir?
 6 A. Yes.
 7 Q. And by whom are you employed?
 8 A. Norandex --
 9 Q. Okay. How do you spell that?
 10 A. N-o-r-a-n-d-e-x slash Reynolds.
 11 Q. Okay. And what kind of company is that?
 12 A. We are a manufacturer/distributor of vinyl
 13 siding to the building industry, but we also
 14 distribute other products.
 15 Q. Okay. And what is your business address?
 16 A. 200 North Star Drive, Rural Hall,
 17 R-u-r-a-l, Hall, North Carolina, 27045.
 18 Q. Okay. And what are your responsibilities
 19 primarily?
 20 A. Outside salesman.
 21 Q. Okay. And could you briefly describe your
 22 employment history from college to the present?
 23 A. Well, I was employed while I was in college
 24 at that age. I worked for Westinghouse 23 years.

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1 A. Yes. Strictly manufacturing.
 2 Q. Okay.
 3 A. And then I've been with Norandex/Reynolds
 4 since then, up until present.
 5 Q. And do you hold any professional licenses?
 6 A. No.
 7 Q. Have you ever been a plaintiff in another
 8 securities-related lawsuit?
 9 A. No.
 10 Q. Okay. Has any corporate entity to which
 11 you were affiliated ever been a plaintiff in a
 12 securities-related lawsuit?
 13 A. No.
 14 Q. Okay. Have you ever been involved in any
 15 other civil, administrative or criminal action or
 16 lawsuit, other than a securities-related action?
 17 A. No.
 18 Q. Okay. Have you ever been the target of an
 19 investigation by a grand jury, the SEC, or any other
 20 government agency or self-regulatory agency?
 21 A. No.
 22 Q. Okay. And I have to ask this: Have you
 23 ever been arrested or charged criminally?
 24 A. No.

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1 Q. Okay. And what did you do at Westinghouse?
 2 A. Well, I was everything from working on the
 3 manufacturing floor to a systems analyst.
 4 Q. Okay.
 5 A. And a computer operator. And then we were
 6 bought out in 1998 and I left.
 7 Q. Okay.
 8 A. And I had a short stint with RFMD, which is
 9 here in Greensboro, for three months.
 10 Q. What is RFMD?
 11 A. Radio Frequency Micro Devices.
 12 Q. Okay. And what did you do there?
 13 A. I actually manufactured wafers that goes --
 14 they're used in cell phones.
 15 Q. So you have a little bit of a background
 16 in -- in technology; is that correct?
 17 A. Not really because that wasn't needed.
 18 People are trained there and they really don't have
 19 to have any background.
 20 Q. Okay. So you were involved in the
 21 manufacture --
 22 A. Yes.
 23 Q. -- rather than sort of the design; is that
 24 what you're saying?

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1 Q. All right. Do you currently own any stocks
 2 or bonds?
 3 A. Yes.
 4 Q. Okay. Do you have any other investments
 5 other than stocks and bonds?
 6 A. Yes.
 7 Q. What are those other investments?
 8 A. Rental property.
 9 Q. Okay. And where is this rental property
 10 located?
 11 A. Winston-Salem, North Carolina.
 12 Q. Okay.
 13 A. And King, North Carolina.
 14 Q. Okay. And approximately how many stocks or
 15 bonds do you own?
 16 MS. REILLY: Objection to form.
 17 Do you mean how many companies is he
 18 invested in or bonds?
 19 Q. Well, let's start with companies.
 20 How many different companies do you own
 21 stock in?
 22 A. Approximately six.
 23 Q. Okay. And do you know what those companies
 24 are?

	Page 18		Page 20
1	A. Sure.	1	systems?
2	Q. Who are they?	2	A. The only system I use is I -- I don't use a
3	A. Microsoft, RFMD, Lucent, Krispy Kreme.	3	BlackBerry or anything. In other words, it's only
4	Right now I can't recollect, but there's -- I'm	4	when I get home, I can call in and find out what a
5	pretty sure there's a couple more.	5	stock is doing through the phone.
6	Q. Okay. And do you know what the overall	6	Q. And who -- and who would you call, for
7	value of your stock portfolio is right now?	7	example?
8	A. I need to ask you this question. Is	8	A. Well, again, TD Waterhouse does not offer
9	this -- is this individual stocks that I may have	9	any professional advice. It's strictly you buy and
10	outside of a 401K?	10	sell yourself. Now, they do have research out there
11	Q. Let's include your 401K as well, if you --	11	that you can take, but you do not deal with a broker.
12	do you own stocks in your 401K?	12	Q. Right. So you do not have an investment --
13	A. Yes.	13	A. No.
14	Q. Are they mutual funds? Do you own mutual	14	Q. -- advisor or broker --
15	funds?	15	A. No.
16	A. Mutual funds.	16	Q. -- today?
17	Q. Okay. Excluding your mutual funds, what's	17	A. No. In either -- in either case, my 401K
18	the value of your stock portfolio?	18	is through my company and, of course, you make your
19	A. 75,000.	19	own choices. And the same thing with this, I've
20	Q. Okay. And if we were to include your 401K	20	always --
21	and your mutual funds, what would -- do you know	21	Q. Have you ever had an investment advisor or
22	what --	22	a broker?
23	A. 75,000 in it, also.	23	A. I had a brokerage firm one time, but it was
24	Q. So an additional --	24	only because I had to have one set up before I went
	Page 19		Page 21
1	A. It's 150 --	1	to TD Waterhouse. It was Cowen, I believe, and I
2	Q. An additional 75?	2	made one trade with them.
3	A. Yes.	3	Q. S. J. Cowen?
4	Q. And do you monitor the performance of your	4	A. Yes.
5	stocks?	5	Q. And do you know when that was?
6	A. Yes.	6	A. That was in the early '80s.
7	Q. How do you monitor the performance of your	7	Q. Okay. Do you monitor the securities
8	stocks?	8	markets in general or do you just monitor the
9	A. I'm an individual trader. I deal with TD	9	performance of your individual stocks?
10	Waterhouse.	10	A. I monitor -- I monitor the overall market.
11	So I get no professional financial advice.	11	Q. Okay. And how do you do that?
12	And last night I went out and looked at them and seen	12	A. Again, I'll see what the Dow's done, what
13	what they do daily.	13	the NASDAQ's done. And, again, with TD Waterhouse,
14	Now, I mean, 80 percent of the time -- in	14	they have many clips or clippings that are put out
15	other words, one day a week -- I may not monitor.	15	there concerning various stocks, not just the ones I
16	But normally, every day I will go out and see what	16	have.
17	the performance of the stock is doing.	17	Q. Okay. So you go onto the TD Waterhouse
18	Q. Okay. And how do you monitor them? Is it	18	website and you read --
19	through the Internet?	19	A. Yes.
20	A. Well, yes. Yes.	20	Q. -- blurbs and articles that they have
21	Q. Okay.	21	posted there; is that correct?
22	A. I actually pull it up and see if there's	22	A. Yes.
23	any news coming out, so forth and so on.	23	Q. Okay. When did you start investing in
24	Q. And do you use any Internet monitoring	24	securities?

6 (Pages 18 to 21)

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1 A. In the '70s.
 2 Q. Okay. And how often have you invested in
 3 securities since that time?
 4 A. I invest depending on the situation. I
 5 can't say every week. I can't say every month. But
 6 it's -- it's active.
 7 Q. Okay. Since your first purchase, has there
 8 ever been a year period where you did not purchase or
 9 sell securities?
 10 A. Yes.
 11 Q. And what year was that?
 12 A. Well, again, I can't recollect from the
 13 '70s. But, again, I had that Cowen one time for one
 14 stock and that was it. And that -- because all my
 15 other monies, when I worked for Westinghouse, was
 16 tied up through our 401Ks.
 17 Q. Okay. But since you started investing in
 18 the '70s -- in the 1970s, you have been regularly
 19 purchasing and selling stock since that time; is that
 20 correct?
 21 A. No. Not from the -- not from the '70s.
 22 Q. Okay.
 23 A. I will have to say from the -- 1998.
 24 Q. Okay. So from 1998 to the present, you've

Page 24

1 A. Yes.
 2 Q. Okay. So you have day-traded before?
 3 A. I have done it, but not on a -- I would say
 4 on a -- the basis of being called a day trader. It
 5 was only because that I felt like after I bought that
 6 stock, it was a bad purchase. But that is not --
 7 I've only done that, as I recollect, one time or two
 8 at the most.
 9 Q. Okay. Have you ever owned stock in Global
 10 Crossing?
 11 A. Yes.
 12 Q. Okay. And what kind of company is Global
 13 Crossing, do you know?
 14 A. Global Crossing was supposed to be a fiber
 15 optic for communications that didn't work out.
 16 Q. Okay. So I take it that you don't still
 17 own your Global Crossing stock?
 18 A. No.
 19 Q. Okay. And what -- do you know what
 20 happened to it?
 21 A. I sold it before it finally went under.
 22 Q. Okay. And did you sell it for a loss?
 23 A. Yes.
 24 Q. Okay. Do you know approximately how much

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1 been regularly investing in stocks?
 2 A. Yes.
 3 Q. And during that period of time, has there
 4 been a year in which you weren't -- you weren't
 5 purchasing and selling stocks?
 6 A. No.
 7 Q. Okay. Has there been a six-month period
 8 where you didn't purchase and sell stocks?
 9 A. No.
 10 Q. Okay. Has there been a three-month period?
 11 A. Possibly.
 12 Q. Okay. But you're not certain one way or
 13 the other?
 14 A. I'm not certain.
 15 Q. Okay. As of today, can you estimate how
 16 many times you've purchased and sold securities in
 17 your lifetime?
 18 MS. REILLY: If you can.
 19 A. Estimated? Seventy-five, a hundred.
 20 Q. Okay. And that's total purchases and
 21 sales?
 22 A. Yes. Yes. I -- I'm not a day trader.
 23 Q. Okay. Have you ever purchased and sold a
 24 security in the course of one day?

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1 your loss was for your Global Crossing stock?
 2 A. No, I don't.
 3 Q. Okay. And have you ever -- oh, so I think
 4 we talked about this before, that you have owned
 5 stock in RF Micro Devices, Inc.?
 6 A. Yes.
 7 Q. And that's the company you formerly worked
 8 for; is that correct?
 9 A. Yes.
 10 Q. And we also talked about what kind of
 11 company RF Micro Devices, Inc. is, but could you tell
 12 me again?
 13 A. They make microchips for telephones, for
 14 Nokia, Ericsson. That's -- that's what they are.
 15 Analog devices.
 16 Q. And approximately how many shares of RF
 17 Micro Devices, Inc., have you purchased?
 18 [PAUSE.]
 19 A. Probably bought and sold 75,000 shares.
 20 Q. Okay. And do you still own RF Micro
 21 Devices, Inc., stock?
 22 A. Yes.
 23 Q. Approximately how many shares do you own?
 24 A. 4,500.

7 (Pages 22 to 25)

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1 Q. Okay. And do you know what the value of
 2 that investment is?

3 A. It's approximately 45,000.

4 Q. Okay. And when you purchase the stock of a
 5 company, do you usually purchase large or small
 6 positions?

7 A. It can vary. I've purchased as little as
 8 100 shares and I've purchased as much as 10,000.

9 Q. Okay. And how do you make that decision?

10 A. First, with how much money I have
 11 available; second of all, of the price that it's
 12 selling for; and third as to what I think it -- the
 13 future of the company will be.

14 Q. Okay. And what is your investment
 15 strategy?

16 MS. REILLY: Objection to form.

17 Q. You can go ahead and answer.

18 A. I really look to invest for long term.

19 Q. So you invest for long-term gains versus
 20 short-term gains; is that what you're saying?

21 A. I do.

22 Q. Have you ever invested for short-term
 23 gains?

24 A. Yes.

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1 A. Yes.

2 Q. -- about 10 percent and 20 percent?

3 A. Ten and twenty, yes.

4 [DISCUSSION OFF THE RECORD.]

5 Q. Okay. You mean \$2.95; is that correct?

6 A. Yes.

7 [DISCUSSION OFF THE RECORD.]

8 Q. Okay. So we talked about this before.

9 Have you ever bought or sold -- bought and sold stock
 10 options, currencies or futures in the -- in the same
 11 day? That is, buy a position and sell the position
 12 that same day?

13 MS. REILLY: Objection to form of the
 14 question.

15 A. Again, I -- once or twice, I did buy a
 16 stock that I felt after I had made the purchase that
 17 it was not a good investment; but not over once or
 18 twice, you know. That is not a rule of thumb that I
 19 do.

20 Q. Okay.

21 A. I usually hold the stocks.

22 Q. And do you recall what those occasions
 23 were?

24 A. If I'm not mistaken, I did Wave Systems one

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1 Q. Okay. And was your investment in Wave
 2 Securities for a short-term -- I'm sorry -- for Wave
 3 Systems for short-term gains?

4 A. Not initially. Not initially.

5 Q. All right. Can you explain what you mean
 6 by that?

7 A. Well, when it first came out, Wave was
 8 under a dollar share. So I watched it. And then
 9 when I made the first purchase, which was July 31st
 10 of 2003, it had already gone like in the 2.25 range.
 11 And I said -- I decided I will buy some.

12 By the time I bought it, it was already 4,
 13 like in another day or two. And I did sell it at
 14 4.59. And the reason being, again, was I didn't know
 15 if this was going to be like some of the others that
 16 I had bought in the past.

17 Because I kind of have a rule of thumb: If
 18 I make 10 percent in a short period of time, usually
 19 that stock is going to fall back some. It's kind of
 20 a equation that I've come up on my own. And if a
 21 stock falls between 20 -- or below 20 percent of what
 22 I've bought it for, I will sell it.

23 Q. So do you make decisions to buy or sell
 24 based on this sort of internal rule that you have --

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1 time like that, but I'd have to look back on my
 2 record.

3 Q. Okay. Other than Wave Systems, can you
 4 recall any other stock that you might have
 5 day-traded?

6 A. The only other one may have been Global
 7 Crossing.

8 Q. Okay. And what made you decide to
 9 day-trade those stocks?

10 A. Well, again, I felt like that the
 11 investment -- either I had a 10 percent or I just
 12 didn't feel good about the trade I had made after I
 13 had already made it.

14 Q. Okay. Okay. Have you ever invested in
 15 commodities?

16 A. No.

17 Q. Okay. Have you ever invested in limited
 18 partnerships?

19 A. No.

20 Q. Have you ever invested in mortgage-backed
 21 securities?

22 A. No.

23 Q. Have you ever purchased options?

24 A. No.

<p style="text-align: right;">Page 30</p> <p>1 Q. Ever purchased futures? 2 A. No. 3 Q. Okay. Have you ever done puts? 4 A. No. 5 Q. Have you ever done calls? 6 A. No. 7 Q. Have you ever done short sales? 8 A. No. 9 Q. Okay. Do you know what the current asset 10 allocation of your portfolio is in terms of, you 11 know, mutual funds, stocks, bonds? 12 A. Yes. 13 Q. Okay. And what is that asset allocation? 14 A. Well, again, if you go back to my 401K, 90 15 percent of it is mutual funds -- 16 Q. Okay. 17 A. -- 10 percent is bonds. And then in my own 18 IRA, it's 100 percent stocks. 19 Q. Okay. Do you recognize that investments in 20 stocks involve certain risks? 21 A. Yes. 22 Q. Okay. And what do you understand those 23 risks to be, generally? 24 A. Those risks could be that a company may not</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Zero. 2 Q. Okay. What proportion of your net worth is 3 derived from earnings on securities? 4 A. Twenty percent. 5 Q. Okay. And when you said that your -- that 6 0 percent of your annual income is derived from 7 earnings on investments and securities, is that 8 because you've been reporting a loss on your 9 securities investments? 10 A. Well, I -- when I say that, I take nothing 11 out of them. They're all in 401Ks, so I don't -- in 12 other words, I never get any proceeds out of it. 13 Q. Okay. 14 A. I don't have a separate account. It's all 15 in IRA. 16 Q. So you don't cash any of it in? 17 A. No. 18 Q. Is that what you're saying? 19 A. No. No. 20 Q. Have you ever bought or sold securities to 21 achieve tax benefits? 22 A. No. 23 Q. To your knowledge, have you ever bought the 24 stocks or bonds of any companies in the digital</p>
<p style="text-align: right;">Page 31</p> <p>1 be able to meet their financial goals that they have 2 estimated, so there could be a loss. It could be the 3 company goes out of business. 4 Q. Any other risks other than -- than those 5 two? 6 A. No. No. 7 Q. Okay. What about the strength of the 8 economy? Could the strength of the economy affect 9 whether a stock value goes up or down? 10 A. Yes. 11 Q. Okay. So that's another risk; isn't that 12 correct? 13 A. Yes. 14 Q. Okay. What about the performance of 15 competitors and the price of competitive products, is 16 that something that could cause the company's stock 17 to go up or down? 18 A. Yes. 19 Q. Okay. So there are other risks in addition 20 to the ones that you mentioned; is that correct? 21 A. Yes. 22 Q. Okay. What proportion of your annual 23 income is derived from earnings on investments and 24 securities?</p>	<p style="text-align: right;">Page 33</p> <p>1 securities industry, other than Wave Systems? 2 A. Not as I recall. 3 Q. What financial or business publications do 4 you read regularly, if any? 5 A. None. 6 Q. Okay. So you don't get the Wall Street 7 Journal? 8 A. No. 9 Q. And do you invest online? 10 A. Yes. 11 Q. Okay. What online brokerage accounts do 12 you have? 13 A. TD Waterhouse. 14 Q. Is that the only one? 15 A. Our company has Fidelity. 16 Q. I'm sorry? 17 A. Our company, the company I work for with my 18 mutual funds, is Fidelity. 19 Q. Okay. So you can access your Fidelity 20 account -- 21 A. Yes. 22 Q. -- online as well. 23 A. Yes. 24 Q. Is that correct?</p>

9 (Pages 30 to 33)

DEPOSITION OF RANDY KEITH GRIFFIN

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1 A. Yes.
 2 Q. So other than TD Waterhouse and Fidelity,
 3 are there any others?
 4 A. No.
 5 Q. Okay. Okay. When did you first start
 6 using the Internet to research your investments?
 7 MS. REILLY: Objection to form.
 8 Q. Well, let me rephrase that.
 9 Do you use the Internet to research your
 10 investments?
 11 A. Yes.
 12 Q. Okay. And when did you first start using
 13 the Internet to research your investments?
 14 A. The year 2000.
 15 Q. And how did you research your investments
 16 prior to that?
 17 A. Periodicals, Wall Street Journal.
 18 Q. Okay. So going back to my previous
 19 question, you used to read financial publications,
 20 you just don't anymore?
 21 A. No.
 22 Q. Okay. So which ones did you used to read?
 23 A. Wall Street Journal.
 24 Q. Okay. Other than the Wall Street Journal?

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1 pretty much all of them that you've read? Have I hit
 2 them all?
 3 A. Yes. The ones you've read there.
 4 Q. Okay. And how frequently would you read
 5 these publications prior to 2000?
 6 A. I normally would pick up a Wall Street
 7 Journal once a week. I did not take a subscription
 8 except for 13 weeks, and then I didn't -- after then
 9 I didn't. And I've taken one or two of the magazines
 10 for just a normal subscription to see if I liked it.
 11 And after then, I didn't renew it.
 12 Q. Okay. So beginning in around 2000, you
 13 stopped reading all these periodicals?
 14 A. I did not subscribe to them. Now, if there
 15 was a copy laying somewhere or -- but -- or I may
 16 pick up one at a newsstand, but not through a regular
 17 subscription.
 18 Q. Okay. And did you read anything about Wave
 19 Systems in any of these periodicals?
 20 A. No.
 21 Q. Okay. Okay. And do you visit any inter --
 22 investment-related chat rooms?
 23 A. No.
 24 Q. Do you watch any financial news programs

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1 A. Fortune.
 2 Q. Okay. Other than the Wall Street Journal
 3 and Fortune?
 4 A. Barron's.
 5 Q. Okay. Let me go through a list and you can
 6 tell me whether you've read them.
 7 A. Okay.
 8 Q. Smart Money?
 9 A. No.
 10 Q. Fortune?
 11 A. Yes.
 12 Q. Business Week?
 13 A. Sometimes.
 14 Q. Forbes?
 15 A. No.
 16 Q. Financial World?
 17 A. No.
 18 Q. Investors Daily?
 19 A. Yes.
 20 Q. Money Magazine?
 21 A. No.
 22 Q. Crain's?
 23 A. No.
 24 Q. Okay. So does that -- does that sound like

1 regularly on television?
 2 A. Not on a regular basis.
 3 Q. Okay. Which ones do you watch on an
 4 irregular basis?
 5 A. If I'm able to watch it, I may catch Cramer
 6 once in a while or CMBC.
 7 Q. Okay. And do you ever solicit information
 8 about companies directly from them before investing?
 9 A. No.
 10 Q. Prior to making investment decisions, do
 11 you read trade publications?
 12 A. No.
 13 Q. Do you ever read brokerage firm or analyst
 14 reports online or --
 15 A. Online, yes.
 16 Q. Okay. Are there any particular brokerage
 17 firm or analyst reports that you regularly read?
 18 A. Any that make -- TD Waterhouse has many
 19 articles that may come from different brokerage
 20 firms.
 21 Q. Okay.
 22 A. And I -- I'll read those like if it's
 23 concerning stocks I have or, as I said, if it's
 24 something I may have an interest in.

10 (Pages 34 to 37)

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1 Q. So, basically, if it's on the TD Waterhouse
 2 website --
 3 A. That's --
 4 Q. -- you may read it?
 5 A. Yes.
 6 Q. But you don't read everything on the TD
 7 Waterhouse website, do you?
 8 A. No.
 9 Q. Okay.
 10 A. No.
 11 Q. Do you read company prospectuses or
 12 offering circulars?
 13 A. I have looked at some that come that stocks
 14 that I currently hold and see what maybe that the
 15 board of directors are proposing. But to go out and
 16 actually review one with the companies I want to
 17 invest in, no.
 18 Q. Okay. So you wouldn't read them before you
 19 invest, but you might --
 20 A. Yes.
 21 Q. -- read them after you began investing; is
 22 that correct?
 23 A. Yes.
 24 Q. And have you read any SEC filings or

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1 A. Yes.
 2 Q. Okay. Who do you discuss your purchases of
 3 securities with?
 4 MS. REILLY: Objection to the form of
 5 the question.
 6 A. My wife.
 7 Q. Okay.
 8 A. And I have discussed them with my brother
 9 or people that -- just in a general conversation, but
 10 not...
 11 Q. Do you ask any of these people for advice
 12 regarding your investments?
 13 A. No.
 14 Q. Okay. So it's really more of a --
 15 A. Individual.
 16 Q. -- this is what I've invested in,
 17 informational --
 18 A. Um-hum.
 19 Q. -- discussions versus recommendations; is
 20 that correct?
 21 A. Yes.
 22 Q. Okay. Do you ever listen to investor
 23 conference calls?
 24 A. I have.

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1 prospectuses or offering circulars for Wave Systems?
 2 A. No.
 3 Q. Okay. Do you maintain files of investment
 4 or financial information?
 5 A. The only information that I maintain is my
 6 trading through TD Waterhouse or Fidelity.
 7 Q. Okay.
 8 A. Not any news reports or that type of
 9 information.
 10 Q. Okay. So do you print out your trading
 11 records and put them physically in a file?
 12 A. I do if need be. But, again, since it's
 13 online now, I can go out and actually access it. So
 14 sometimes I do; sometimes I don't. It just depends.
 15 Q. Do you know if you had any documents or
 16 trade confirmations relating to Wave -- Wave Systems
 17 in your files?
 18 A. Yes.
 19 Q. Okay. And did you --
 20 A. Yes.
 21 Q. Okay. And did you turn those documents
 22 over to your attorneys in this case?
 23 A. Yes.
 24 Q. All of them?

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1 Q. Okay. For what companies have you listened
 2 to investor conference calls?
 3 A. I have listened to RFMB. Listened to that.
 4 That's the only one.
 5 Q. Have you ever belonged to an investment
 6 club?
 7 A. No.
 8 Q. Sounds fun, though, doesn't it? Just
 9 kidding. You don't have to answer that.
 10 Okay. Do you have any other sources of
 11 information about investments that we have not
 12 covered today?
 13 A. No.
 14 MS. MARTIN: Do you mind if I take a
 15 short break? I'm just going to grab some coffee.
 16 MS. REILLY: Oh, sure. Okay.
 17 MS. MARTIN: A quick break. Go off
 18 the record for a second.
 19 [DISCUSSION OFF THE RECORD.]
 20 [RECESS.]
 21 MS. MARTIN: Go back on the record,
 22 please.
 23 I'm going to mark as the next
 24 exhibit -- I'm not sure what exhibit number that

11 (Pages 38 to 41)

<p>1 is -- Plaintiffs' Response and Objections to 2 Defendant's First Request for Production of 3 Documents.</p> <p>4 Do you know what the last exhibit 5 number was?</p> <p>6 MS. REILLY: Are you going to be 7 re-marking it for his deposition versus keeping a 8 running exhibit numbering?</p> <p>9 MS. MARTIN: I didn't think this had 10 been marked previously. I thought just the 11 interrogatories had been marked, but maybe I'm wrong.</p> <p>12 MR. MOSSER: That's the document 13 request? I think you're right.</p> <p>14 MS. REILLY: Those did get marked.</p> <p>15 MR. MOSSER: Yes. We just did the 16 interrogatories on Friday.</p> <p>17 MS. REILLY: Yep.</p> <p>18 MS. MARTIN: Okay. So it's number --</p> <p>19 MR. MOSSER: Is it No. 1 or No. 20 or 20 whatever?</p> <p>21 MS. REILLY: It will be 25.</p> <p>22 MS. MARTIN: Twenty-five. Exhibit 23 No. 25.</p> <p>24 [EXHIBIT NO. 25 MARKED FOR IDENTIFICATION.]</p>	<p>Page 42</p> <p>1 to sort of flip through the request. Because what 2 I'm going to ask is whether you searched for 3 documents that were request for -- requested by the 4 Defendants in this action.</p> <p>5 [PAUSE.]</p> <p>6 A. Could you ask the question, please, again?</p> <p>7 Q. Yes. Did you search for the documents that 8 were requested by the Defendants in this action?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And did you find any documents?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And what documents did you find?</p> <p>13 A. My documents were the trades that I made, 14 Wave Securities.</p> <p>15 Q. Okay. And where did you find those 16 documents?</p> <p>17 A. Went online and pulled them from TD 18 Waterhouse.</p> <p>19 Q. Okay. So you pulled them offline, printed 20 them out, and gave them to your lawyers --</p> <p>21 A. Yes.</p> <p>22 Q. -- is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Did you find anything other than</p>
<p>1 BY MS. MARTIN:</p> <p>2 Q. Okay. So, Mr. Griffin, please take a 3 second to review the document that's just been marked 4 Exhibit No. 25.</p> <p>5 Have you seen this document before today?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And what is that document?</p> <p>8 A. This is a civil action, class action 9 lawsuit by the three here, Anne Brumbaugh, Gary 10 Harmon and myself. First request for production of 11 documents.</p> <p>12 Q. Okay. So do you understand that to be your 13 response to Defendants' request for production of 14 documents?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And when did you first see that 17 document?</p> <p>18 A. I can't recollect or recall the exact date, 19 but it was sent to me by my attorneys. So I don't 20 know exactly the --</p> <p>21 Q. Do you know if you saw it before or after 22 it was filed in this lawsuit?</p> <p>23 A. I don't recall.</p> <p>24 Q. And could you look at -- just take a moment</p>	<p>Page 43</p> <p>1 those documents?</p> <p>2 A. No.</p> <p>3 MS. MARTIN: Okay. And let me mark as 4 Exhibit 26 a document Bates stamped GRIF-1 through 5 16.</p> <p>6 [EXHIBIT NO. 26 MARKED FOR IDENTIFICATION.]</p> <p>7 Q. Okay. Mr. Griffin, is this a collection of 8 all the documents that you located in response to 9 Defendants' request for production?</p> <p>10 A. Yes.</p> <p>11 Q. And are you still a customer of TD 12 Waterhouse?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And how many accounts do you have at 15 TD Waterhouse?</p> <p>16 A. I have two.</p> <p>17 Q. Okay. And what are those two accounts?</p> <p>18 A. One is an IRA and one is an individual 19 small account that I can do trading, but there are so 20 few funds in there that I never -- I can't tell you 21 the last time I made a trade through it.</p> <p>22 Q. Okay. And -- and do you know if you have a 23 rollover IRA --</p> <p>24 A. Yes.</p>

12 (Pages 42 to 45)

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1 Q. -- at TD Waterhouse as well?
 2 A. Yeah. It was rolled over from Westinghouse
 3 when I was there and I rolled it over to TD
 4 Waterhouse.
 5 Q. So is that the second account that you're
 6 referring to or is that in addition to the two that
 7 you just mentioned?
 8 A. No. It's just -- it's those two that were
 9 mentioned.
 10 Q. Okay. So it's -- it's the IRA?
 11 A. This one is the IRA that we're --
 12 Q. Right.
 13 A. -- yes --
 14 Q. And then the --
 15 A. -- that we rolled over.
 16 Q. And then the rollover IRA?
 17 A. No. This is the rollover.
 18 Q. Oh, you're certain -- you're certain that's
 19 the rollover IRA?
 20 A. Yes. From Westinghouse. This is the
 21 rollover.
 22 Q. Okay. And then your other account that you
 23 mentioned is...
 24 A. It's just a small funds out there probably

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1 worth \$5,000 that I -- I can't tell you the last time
 2 I made a trade in it.
 3 Q. Okay.
 4 A. I look at it because there's just a couple
 5 stocks in it. RFMD, there's a few shares. But it's
 6 not enough that I even --
 7 MS. MARTIN: Let's mark as Exhibit 27,
 8 I believe, a statement dated 3-28-02 from TD
 9 Waterhouse.
 10 [EXHIBIT NO. 27 MARKED FOR IDENTIFICATION.]
 11 Q. Do you recognize this statement?
 12 A. Yes.
 13 Q. Okay. Now, is this the same account?
 14 A. No.
 15 Q. Okay. Which account is this?
 16 A. This is my son's account.
 17 Q. Okay. Well, then, that solves that
 18 question. That was a mystery that needed to be
 19 solved.
 20 Okay. So this account is not your account?
 21 A. No. The --
 22 MS. REILLY: The second --
 23 A. The second is my son.
 24 Q. Okay. Okay. So you have two brokerage

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1 accounts and you produced -- you produced documents
 2 in this case that relate to only one which is your
 3 individual IRA; is that correct?
 4 A. Yes.
 5 Q. Okay. And do you know what the account
 6 number is for your individual IRA?
 7 MS. REILLY: If you know.
 8 A. 44691607, if I recall -- recall correctly.
 9 Q. And who makes the trading decisions for
 10 this account?
 11 A. Me.
 12 Q. Okay. And only you?
 13 A. Only me.
 14 Q. Is this the only brokerage account that you
 15 bought Wave stock in?
 16 A. Yes.
 17 Q. Okay. And what is the address of record
 18 for this account?
 19 And you can look at the exhibit if that
 20 will help.
 21 A. Okay. It will.
 22 MS. REILLY: That's Exhibit 26, you're
 23 referring to?
 24 MS. MARTIN: Yes.

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1 A. PO Box 215, King, North Carolina.
 2 Q. Okay. And why is the address a PO box?
 3 A. Why is it? We lived in King for 25, 30
 4 years. And we have moved to Tobaccoville in the last
 5 three or four years, so we kept a post office box for
 6 all those years, just in case we needed it. And also
 7 for my son when he -- to get his mail there when he
 8 was at college and different places, he would give
 9 that address.
 10 Q. Okay. Is that the address that you
 11 currently use?
 12 A. I use both, depending.
 13 Q. Okay. And do you know if your other TD
 14 Waterhouse account has the same address of record?
 15 A. Yes. It should, yes.
 16 Q. Okay. When did you first become aware that
 17 Wave Systems existed?
 18 A. I got a fax that came into my office at
 19 home and it's a StockPick.com -- and I don't know if
 20 that's specifically how it's worded -- report. You
 21 know, it came across. It gives recommendations or --
 22 I wouldn't say recommendations. It gives stocks that
 23 may be something to look at for the future.
 24 And there was no specific company or, like

13 (Pages 46 to 49)

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1 I say, I do not know who writes this for these
 2 people, giving financial advice. But I looked at it
 3 and, of course, I went online to see if it was
 4 something I might be interested in. And this was
 5 around June of 2003. So I started watching it. And
 6 it was in the 75 to 90 cents range. And that's when
 7 I started watching the stock.

8 Q. Okay. And you said it was called Stock
 9 Pick?

10 A. And, again, I -- I don't recall exactly.
 11 Stock Pick report or it's -- like I say, it's -- I
 12 don't know how those people get your -- but I -- I
 13 receive once a week or once a month or whenever.

14 Q. Okay. And is that through TD Waterhouse?
 15 A. No. No. It -- it's -- probably to me,
 16 it's like these travel agencies sending you a cruise
 17 for \$99. So I really don't know where the origin is.

18 Q. Okay.
 19 A. I don't know how they've gotten my fax
 20 number.

21 Q. So it's like an advertisement --
 22 A. Yes.

23 Q. -- that you received --
 24 A. Yes.

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1 Q. And do you remember if it quoted anybody
 2 who worked for Wave Systems?

3 A. No.

4 Q. Okay. No, it did not; or, no --

5 A. It did not in that report.

6 Q. Okay.

7 A. No.

8 Q. Do you have a copy of this fax?

9 A. No.

10 Q. What did you do with the fax?

11 A. It's -- throw them in the trash can.

12 Q. And do you assume that everything you read
 13 in Stock Pick is correct?

14 A. No.

15 Q. Okay. And after you read Stock Pick, did
 16 you do any additional research on Wave Systems?

17 A. Yes.

18 Q. Okay. And what -- what research did you
 19 do?

20 A. I went back, as I said, to TD Waterhouse
 21 and I watched it until in July and see what it was
 22 doing. And, of course, there was some information
 23 coming out from -- again, I don't know where the
 24 origin -- where TD Waterhouse gets their -- because

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1 Q. -- via e-mail; is that correct?

2 A. No. Fax.

3 Q. Oh, by fax?

4 A. Yes.

5 Q. All right. And is Stock Pick, is this the
 6 only one that you receive or do you receive many of
 7 these?

8 A. No. It's just -- again...

9 Q. Okay. And -- and Wave Systems appeared on
 10 the Stock Pick?

11 A. Yes.

12 Q. Okay. And approximately when was this?

13 A. It was approximately June of 2003.

14 Q. Okay. And what did it say about Wave to
 15 be --

16 A. It was talking about -- excuse me.

17 Q. That's all right.

18 A. They were talking about the security
 19 devices and -- and software that they were going
 20 to -- that they were in and that they thought it may
 21 be something to look at in the future.

22 Again, this is not by any financial advisor
 23 or anything. It's whoever -- as I said, I don't know
 24 where the origin is.

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1 Motley Fool, Cramer, there's so many.

2 And so, again, I was again with that
 3 newsletter watching to see what the stock was -- what
 4 it was doing.

5 Q. Okay. And are you aware of any brokers
 6 making any investigation of Wave or the digital
 7 securities industry?

8 A. No. Huh-uh.

9 Q. And prior to your purchase, did you discuss
 10 Wave or the digital securities product industry with
 11 anyone?

12 A. No.

13 Q. Okay. What, if any, negative factors did
 14 you perceive at the time you contemplated your
 15 initial investment in Wave?

16 A. None.

17 Q. All right. And what positive factors did
 18 you perceive?

19 A. The positive, it was that it was so low in
 20 price that if there was any investment made, yes, I
 21 could stand to lose, but it would not be a
 22 substantial amount of money.

23 But I was looking at the up-side based on
 24 the information that was perceived from the comments

14 (Pages 50 to 53)

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1 that were being made on the web.

2 Q. Okay. And -- and what were those comments
3 to the extent that you remember?

4 A. Well, again, it was talking about the
5 industry they were in and, of course, the futures of
6 what they were looking at. And then, of course,
7 later on Mr. Sprague made some comments about Intel
8 and how that they may be bundling together.

9 And, of course, the stock made a
10 substantial -- when I did finally buy it, it had gone
11 from like .84, .85 or whatever it was, up to
12 \$2-and-something like in a day.

13 So that's when I tentatively started
14 watching this. It just must be something that's
15 going to be a good stock to invest in because there's
16 good reports coming out and it's coming out from the
17 CEO.

18 Q. Okay. And what did you -- what do you
19 recall reading prior to purchasing Wave securities
20 about -- about Intel, if anything?

21 A. Well, I've owned Intel in the past. And,
22 of course, Intel may have three sheets on TD
23 Waterhouse or any news bulletin. And, again, you
24 can't read every one of them. So I did not see

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1 Q. Okay. And do you verify that those are the
2 correct dates?

3 A. Yes.

4 Q. If you were to print it out again on a
5 different printer, do you think you would be able to
6 capture that column?

7 A. Yes.

8 Q. When -- I think we've asked that -- that
9 you would do that because --

10 MR. MOSSER: I think we tried it
11 again, but the same thing happened, so we'll have to
12 make another attempt.

13 MS. MARTIN: Okay. It would just be
14 nice to have the actual record.

15 MR. MOSSER: We'll get to it.

16 MS. MARTIN: Thank you.

17 THE WITNESS: Can we take a break
18 just -- do you want to answer -- do you want to step
19 out?

20 MS. REILLY: If we can go off the
21 record for a moment?

22 MS. MARTIN: Sure.

23 THE WITNESS: Okay.

24 [DISCUSSION OFF THE RECORD.]

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1 Intel -- any specifics.

2 Q. Okay. So you didn't know any specifics
3 about Intel and Wave or a relationship between the
4 two at the time you purchased Wave securities?

5 A. No.

6 Q. Was August 1st, 2003, the first time you
7 ever bought Wave stock?

8 A. I think it was -- if I recall, it was July
9 31st or August 1st.

10 Q. And you can look at --

11 A. Okay.

12 Q. -- Exhibit 26 to refresh your memory.

13 A. Okay. August 1st.

14 Q. Okay. So those are all your purchases and
15 sales of Wave securities?

16 A. Yes. Yes.

17 Q. Okay. And I notice on the far right of
18 Exhibit 26, there's a handwritten column; is that
19 your handwriting?

20 A. Yes.

21 Q. Okay. And why did you hand-write those
22 dates in there?

23 A. Because my printer was not set up properly
24 to print off the (gestures).

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1 THE WITNESS: Thank you.
2 MS. REILLY: We'll be able to provide
3 it.

4 MS. MARTIN: Thank you. We can go
5 back on the record.

6 BY MS. MARTIN:

7 Q. Okay. So did you purchase 10,000 shares of
8 Wave stock for \$4 on August 1st, 2003?

9 A. Yes.

10 Q. Okay. And what was the source of funds for
11 this purchase?

12 A. Source of funds? It was cash sitting in my
13 IRA.

14 Q. Okay. And this was your first purchase of
15 Wave Systems --

16 A. Yes.

17 Q. -- securities?

18 A. Yes.

19 Q. Okay. And why did you purchase Wave stock
20 on August 1st, 2003?

21 A. Well, as I previously said, I had gotten
22 this fax from whatever origin it was, and it was
23 talking about -- I would not say recommending, but
24 just talking about what Wave could be. And at the

15 (Pages 54 to 57)

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1 time when I first started watching in July, it was
 2 80 -- 70 or 89 cents.

3 And then it jumped to \$2 and a quarter like
 4 on July 31st, or somewhere about then. And I said,
 5 "Well, this information means the analysts have
 6 picked up on it and undoubtedly it's going to be a
 7 good stock to purchase." And by the time I did get
 8 it, it was already at 4. So that's the reason I made
 9 the purchase at 4.

10 Q. And do you know why the stock price went up
 11 on July 31st, 2003?

12 A. The only thing that I can think of, going
 13 back and looking at the articles that were online,
 14 was what Mr. Sprague and anyone else for the company
 15 that may have come out with the seemingly positive
 16 outlook for Wave with their maybe joint venture with
 17 Intel, IBM or some other software.

18 So I -- I'm assuming that the analysts and
 19 other investors as myself were banking on this would
 20 be a good stock since they were going to hook up with
 21 such good companies with past histories.

22 Q. Okay. And that's your understanding
 23 sitting here today; is that correct?

24 A. Yes.

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1 had published that a bundling of products with Intel,
 2 it may be going under a platform for future
 3 computers. And that's what I based my decision to
 4 buy on.

5 Q. So you had read those materials prior to
 6 August 1st, 2003?

7 A. As I said, whatever the time period was
 8 before I made my purchase, yes.

9 Q. Were you aware of any of Wave's forecast
 10 for revenue at the time of your August 1st purchase?

11 A. No.

12 Q. Okay. Was it your understanding that Intel
 13 was required to purchase a minimum number of software
 14 units from Wave?

15 A. Not as I recall.

16 Q. Okay. Do you know -- was it your
 17 understanding that they had to purchase any from
 18 Wave?

19 A. No. That they didn't have to purchase any.

20 Q. Okay. And is it your contention that the
 21 price of Wave stock was artificially inflated on
 22 August 1st, 2003?

23 MS. REILLY: Objection to the form of
 24 the question.

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1 Q. Okay. What about before, you know, when
 2 you made the purchase? Because I think we discussed
 3 before I think your answer was that you weren't aware
 4 of the Intel -- any relationship between Wave and
 5 Intel at that time.

6 MS. REILLY: Objection to the form of
 7 the question. If you could ask him a question versus
 8 trying to rephrase his responses.

9 Q. Did you understand -- did you have an
 10 understanding on August 1st, 2003, that there was
 11 some sort of relationship between Wave and Intel?

12 A. I don't recall exactly when Mr. Sprague
 13 made his comments, but I -- I recall, to the best of
 14 my ability, around July 31st or August 1st that --
 15 somewhere in that period of time that these articles
 16 had come out. And that's the reason. Up until then,
 17 no. Not until the articles appeared.

18 Q. Okay. So let's just make sure that the
 19 record is clear on this.

20 When you made your first purchase, what had
 21 you read about Wave Systems?

22 A. I had read, again, that the CEO,
 23 Mr. Sprague, a representative of the company -- there
 24 was a couple articles out there that TD Waterhouse

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1 Do you understand the question?

2 A. She -- well, go ahead and let her -- re --
 3 re -- go ahead and ask me again and we'll...

4 Q. Okay. Is it your contention in this
 5 lawsuit that the price of Wave stock was artificially
 6 inflated on August 1st, 2003?

7 MS. REILLY: Do you understand the
 8 question?

9 THE WITNESS: Yes.

10 MS. REILLY: Okay.

11 A. And that's the reason I'm not answering.

12 Q. Do you know whether it's your contention in
 13 this lawsuit that the price of Wave stock was
 14 artificially inflated on August 1st, 2003?

15 MS. REILLY: And just answer the
 16 question to the ability that you can without
 17 divulging conversations with counsel, which would be
 18 privileged.

19 A. Yes.

20 [PAUSE.]

21 A. Yes.

22 Q. Okay. And did you sell all 10,000 shares
 23 of Wave stock that you purchased on August 1st, 2003,
 24 three days later, on August 4th, 2003, for \$4.59?

16 (Pages 58 to 61)

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1 A. Yes.
 2 Q. Okay. Why is it your contention that the
 3 price of Wave stock was artificially inflated on
 4 August 1st, 2003? What's the basis of that
 5 contention?
 6 A. At this point in time?
 7 Q. Yes.
 8 A. Based on since -- since then, there has
 9 been no product delivered; other secondary offerings.
 10 So I felt like that this was -- was not a bona fide
 11 product or service. And somehow, like I say, there
 12 was information that was conveyed that caused this to
 13 go from 84 cents to \$5 a share ever before it --
 14 Q. Okay.
 15 A. -- before I sold it at 2 on 11-25. As I
 16 continued to watch the stock and reports that may
 17 have come in --
 18 Q. Okay. Well, let's go through each purchase
 19 and sale separately.
 20 A. Okay. Sure.
 21 Q. Why did you sell all 10,000 shares of Wave
 22 stock on August 4th, 2003?
 23 A. Again, this was a -- not a concrete rule of
 24 thumb, but I had used it at this time; 10 percent

1 Q. And was your next purchase of wave stock on
 2 August 5th, 2003?
 3 A. August 5th, correct.
 4 Q. Okay. And did you purchase 2000 shares at
 5 \$4.50?
 6 A. Yes.
 7 Q. And why did you purchase Wave only one day
 8 after you had just sold off all your Wave holdings?
 9 A. Because it had gone back down and I felt
 10 like this was a time to buy it again.
 11 Q. Okay. What, if anything, new had you read
 12 about Wave at the time of this purchase?
 13 A. Well, in two days, nothing had changed.
 14 Q. And were you aware of any of Wave's
 15 forecasts for revenue at the time of this purchase?
 16 A. No.
 17 Q. Is there any other information that you
 18 relied on to make this purchase, any recommendations
 19 from anyone?
 20 A. No.
 21 Q. Is it your contention that the price of
 22 Wave stock was artificially inflated on August 5th,
 23 2003?
 24 A. Yes.

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1 gain. If you'll notice, it's a little more than 10
 2 percent.
 3 Q. Okay. So you followed your internal rule
 4 and sold at a 10 percent gain; is that correct?
 5 A. Yes.
 6 Q. And what, if anything, new had you learned
 7 or read about Wave at the time of this sale that you
 8 didn't know at the time of your August 1st purchase?
 9 A. Best I recall, there was two articles came
 10 out about Wave from Mr. Sprague. And, of course, one
 11 of them was Intel and the other one was positive,
 12 too. But I can't recall what the other one said.
 13 But both of them were positive concerning the stock.
 14 Q. Okay. Did these articles contribute to
 15 your decision to sell?
 16 A. Well, again, I used my rule of thumb, 10
 17 percent, on this one.
 18 Q. And you made a \$5,900 profit from the sale
 19 of those shares; is that correct?
 20 A. If calculating correctly, yes.
 21 Q. So you're not claiming that you were
 22 damaged by the sale of the shares that you purchased
 23 on August 1st, 2003, are you?
 24 A. Not by the first purchase.

1 Q. Okay. Is it also your contention that the
 2 price of Wave stock was inflated on August 4th of
 3 2003, when you sold 10,000 shares?
 4 A. Yes.
 5 Q. So now we're on to your second sale. And
 6 did you sell all 2000 shares -- I'm sorry -- 20,000
 7 shares on September 4th, 2003, at \$3.20?
 8 A. Yes.
 9 Q. Okay. And what information did you rely on
 10 to make this sale?
 11 A. Not only my 20 percent rule of thumb, but
 12 there was no other forthcoming news on how things
 13 were progressing. And you can see that was about a
 14 month later, so that is not a day-trade.
 15 Q. Okay. So you hadn't read anything new
 16 about Wave?
 17 A. Not as I recall.
 18 Q. Okay. And what was your understanding of
 19 why the price dropped \$1.39 from August 4th, 2002, to
 20 September 4th, 2000 -- I'm sorry -- August 4th, 2003,
 21 to September 4th, 2003?
 22 A. Well, again, there was no forthcoming
 23 articles. And that's the reason, again, I was using
 24 the rule of thumb, that: Why was it dropping?

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 Q. So you based your decision to sell on the 2 fact that there was no news and that the price was 3 falling?</p> <p>4 A. Yes.</p> <p>5 Q. Are you claiming that you were damaged by 6 the sale of this stock because of the conduct of any 7 of the Defendants?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. What conduct was that?</p> <p>10 A. Misleading information.</p> <p>11 Q. And what misinformation -- what misleading 12 information in particular?</p> <p>13 A. Well, there was no contract or consortium 14 with Intel or any other software company for their 15 security to be put on their platform. Misleading 16 information.</p> <p>17 Q. Okay. And where had you read -- had you 18 read this misleading information prior to these 19 purchases that we've discussed already?</p> <p>20 MS. REILLY: Objection to the form of 21 the question.</p> <p>22 MS. MARTIN: Okay.</p> <p>23 Q. Let me try to restate that one. 24 On September 4th, 2003, did you have any</p>	<p style="text-align: right;">Page 68</p> <p>1 Wave securities?</p> <p>2 A. If you'll go back and look from September 3 the 4th when I made a sale of 20,000 to September the 4 17th, the stock stabilized, 3.20 to 3.30. So again, 5 I made a -- a decision to buy it back forthcoming 6 that may be good news that this was a price point 7 that it could hold at until whatever was coming from 8 the company in the future. So I went back and bought 9 15,000 shares on 9-17.</p> <p>10 Q. Okay. But based on your previous knowledge 11 of the Wave price fluctuations, you understood that 12 this was a risky purchase, didn't you?</p> <p>13 MS. REILLY: Objection to the form of 14 the question.</p> <p>15 A. All stocks are risky purchases.</p> <p>16 Q. Did you believe that your purchase of Wave 17 securities on 9-17-03 was a risky purchase?</p> <p>18 MS. REILLY: Objection to the form of 19 the question.</p> <p>20 A. I did not have any doubt that the stock was 21 still a bona fide purchase, that the company still 22 may be in the future in a relationship with Intel or 23 whomever. So at this point, as I said, the stock did 24 not drop substantially in 13 days there, just 10</p>
<p style="text-align: right;">Page 67</p> <p>1 understanding one way or another of whether there was 2 an agreement between Wave Systems and Intel or any 3 other company?</p> <p>4 MS. REILLY: Objection to the form of 5 the question. Other than he's already testified to?</p> <p>6 MS. MARTIN: I'm not sure that he's 7 testified that there -- that he was aware of any 8 agreement.</p> <p>9 MS. REILLY: I believe he testified 10 that when he initially purchased, he understood that 11 the company had an agreement with Intel and the 12 bundling of the software on their platforms.</p> <p>13 Q. Well, is that -- is that correct, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Were you concerned that Wave's price had 16 fallen approximately 30 percent from your first sale 17 to your second sale?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And despite knowing that the price 20 had fallen 30 percent between your first and second 21 sale, you continued to purchase Wave securities; is 22 that correct?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And why did you continue to purchase</p>	<p style="text-align: right;">Page 69</p> <p>1 cents -- or risen 10 cents.</p> <p>2 Q. So is the real reason that you purchased 3 stock on 9-17-03 because of the price stabilization?</p> <p>4 A. Yes.</p> <p>5 MS. REILLY: Objection to the form of 6 the question.</p> <p>7 Q. Okay. And were there any other reasons 8 that you purchased Wave stock on 9-17-03?</p> <p>9 A. No.</p> <p>10 Q. And did you sell all 15,000 shares of 11 stock -- Wave stock that you purchased on 9-17-03 12 later that same day for \$3.49?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So why did you day-trade Wave stock 15 on 9-17-03?</p> <p>16 A. If I calculate correctly here, to make 17 about \$3,000. So what I was trying to do was recover 18 some of my losses from a previous trade, if you'll go 19 back.</p> <p>20 Q. Okay. So you made your decision to sell 21 based on the increase in price; is that correct?</p> <p>22 A. Um-hum.</p> <p>23 Q. Had you learned anything new about Wave 24 between the time that you purchased Wave and sold</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 Wave on 9-17-03? 2 A. Not as I recall. 3 Q. And you made approximately, what, \$2,800 4 from this purchase and sale? 5 A. Approximately. 6 Q. So you are not claiming that you were 7 damaged by this sale -- this purchase and sale, are 8 you? 9 MS. REILLY: Objection to the form of 10 the question. 11 A. From this sale? No. 12 Q. What about your purchase on 9-17-03? Are 13 you claiming that you were damaged in any way from 14 that purchase? 15 MS. REILLY: Objection to the form of 16 the question. 17 A. No, I'm not -- not for that one purchase. 18 Q. Okay. So three days later, on 9-17-03, you 19 made two separate purchases of Wave; is that correct? 20 A. On 9-19 or 9-17? 21 Q. I'm sorry. 9-19-03. 22 A. I made two separation purchases, yes. 23 Q. Okay. And why did you make two separate 24 purchases on 9-17 -- 9-19-03?</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Again, based on price strictly that had 2 fallen and, again, as an investment. 3 Q. Okay. And -- and why did you want to 4 purchase because the price had fallen? 5 A. Well, I felt like it was still in the 6 trading range of the price that I thought that it 7 could stabilize at. And that's the reason I -- it's 8 also called dollar cost averaging. 9 Q. So you make a lot of your stock purchasing 10 and selling decisions based on price movements; is 11 that correct? 12 MS. REILLY: Objection to the form of 13 the question. 14 A. Not every time. 15 Q. Okay. But you did in the case of Wave on 16 the 9-19-03 purchase; is that correct? 17 A. Yes. 18 Q. And is it your contention that the price of 19 Wave was artificially inflated on 9-19-03? 20 A. Yes. 21 Q. Okay. And what is the basis for that 22 contention? 23 A. Well, again, the articles that were 24 previously put out by Mr. Sprague.</p>
<p style="text-align: right;">Page 71</p> <p>1 A. I don't recall why I made two separate 2 purchases. 3 Q. Okay. Is that normal for you to do? 4 A. I've done it once or twice; but, no, it's 5 not normal. 6 THE WITNESS: Can we have a break? 7 MS. MARTIN: Do you want another 8 break? We can go off the record for a moment and 9 take another break. Thanks. 10 [RECESS.] 11 BY MS. MARTIN: 12 Q. I think we were talking about your third 13 purchase of Wave on 9-17-03 and your third of sale of 14 Wave on 9-17-03 before the break. 15 A. Um-hum. 16 Q. And I think actually we had finished that. 17 So let's move on to the fourth purchase of Wave -- 18 fourth and fifth purchase on 9-19-03. 19 What, if anything, new had you read or 20 learned about Wave between your 9-17 purchase and 21 sale and your 9-19 purchase? 22 A. I don't recall reading any new information. 23 Q. Okay. And why did you make the 9-19-03 24 purchase?</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. And what was -- when -- when was the 2 information that was either misleading or omitted 3 from those statements eventually disclosed to the 4 market? 5 A. I don't recall. 6 Q. Okay. Do you know if it's ever been 7 disclosed to the market? 8 A. No, I don't. 9 Q. Okay. And did you sell all of the shares 10 that you bought on 9-19-03 at \$2 -- on 10-13-03 at 11 \$2.85? 12 A. Yes. 13 Q. And is this the second time that you had 14 bought and sold Wave stock for a loss? 15 A. I believe that's correct, by our trade 16 here. 17 Q. Okay. And why was it -- what was your 18 understanding of why the stock price of Wave had 19 dropped nearly 37 percent from August 4th, 2003, to 20 October 13th, 2003? 21 A. That they were -- there was no product, no 22 commitment with Intel. But, again, none of this was 23 put out specifically. 24 Q. So that -- that's your understanding</p>

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1 sitting here today; is that correct?
 2 A. That?
 3 Q. That that's the reason why there was the
 4 price drop?
 5 A. Yes.
 6 Q. What was your understanding at the time
 7 that you made your fourth sale of Wave on October
 8 13th, 2003, as to why the price was dropping?
 9 A. Again, I had no basis.
 10 Q. So you did not -- you had no understanding
 11 as to why the stock price was dropping?
 12 A. No.
 13 Q. Did you make any effort to find out why the
 14 stock price was dropping?
 15 A. Well, again, I -- I only rely on what news
 16 bulletins come across from TD. And, of course,
 17 they've got research and if there's nothing listed
 18 there, then I guess it's what I go by.
 19 Q. Okay. So were you concerned at this time
 20 about the drop in price of Wave securities?
 21 A. No.
 22 Q. And why weren't you concerned?
 23 A. Because, again, it was within a range of
 24 approximately 20 percent that --

1 Q. And why did you purchase Wave stock on
 2 October 15th, 2003?
 3 A. Again, it had gone 10 percent up. So,
 4 again, stabilization of pricing.
 5 Q. Okay. So the main reason for purchasing
 6 Wave stock on October 15, 2003, was a price movement?
 7 A. Yes.
 8 Q. Is there anything that you had learned or
 9 read about Wave at this time that affected your
 10 purchase?
 11 A. I don't recall.
 12 Q. Is it normal for you to continue buying a
 13 stock after you had already lost a fair amount of
 14 money buying and selling that same stock?
 15 MS. REILLY: Objection to the form of
 16 the question.
 17 A. No, it is not normal.
 18 Q. Okay. Would you consider \$25,000 a fair
 19 amount of money?
 20 A. Depending.
 21 Q. Is it normal for you to continue buying
 22 stock after you've already lost \$25,000 buying and
 23 selling it?
 24 MS. REILLY: Objection to the form of

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1 Q. I'm sorry. What was in a range of
 2 approximately 20 percent?
 3 A. Price fluctuations.
 4 Q. Okay. I think that -- that between August
 5 4th, 2003, and October 13th, 2003, it had dropped
 6 approximately 37 percent?
 7 A. I'm sorry. I was looking back from 9-19 to
 8 10-13. I apologize.
 9 Q. Okay. Is -- is that the type of price drop
 10 that would cause you concern, a 37 percent price
 11 drop?
 12 A. Not with every stock.
 13 Q. Okay. What about with this stock?
 14 A. At the time, I was not concerned.
 15 Q. Okay. And how much money had you lost
 16 buying and selling Wave stock on August -- I mean,
 17 October 13th, 2003? Do you know?
 18 A. I do not know.
 19 Q. Okay. And three days later, on October
 20 15th, 2003, is it correct that you purchased -- I'm
 21 sorry -- that you sold your Wave stock -- I'm
 22 sorry -- that you purchased another 5,000 shares of
 23 Wave stock?
 24 A. Yes.

1 the question.
 2 A. No.
 3 Q. And did you sell the 5,000 shares of Wave
 4 stock that you purchased on October 15th, 2003, on
 5 November 25th, 2003?
 6 A. Yes.
 7 Q. Okay. And why did you sell all your Wave
 8 shares on November 25th, 2003?
 9 A. Because they had dropped to \$2 a share and
 10 I felt like at this time that it had got to a price
 11 point when I first bought it at \$4, it was 50 percent
 12 less than the initial investment, and I would hold to
 13 watch any further actions by the company before
 14 reinvesting, if I did at all.
 15 Q. Okay. So is it fair to say that you sold
 16 all your shares of Wave stock on November 25th, 2003,
 17 because of a price movement?
 18 MS. REILLY: Objection to the form of
 19 the question. That's not what he just testified.
 20 Q. Can you answer my question?
 21 THE WITNESS: Can I rely on you for --
 22 MS. REILLY: Can you reask the
 23 question, please?
 24 Q. Did you understand my question?

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 A. No. Would you ask it again?</p> <p>2 Q. Okay. Did you sell all of your shares, all</p> <p>3 5,000 shares, of Wave stock on November 25th, 2003,</p> <p>4 because of a price movement?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And is it your contention that Wave</p> <p>7 stock was artificially inflated on November 25th,</p> <p>8 2003?</p> <p>9 A. Yes.</p> <p>10 Q. And did you make any purchases of Wave</p> <p>11 stock after November 25th, 2003?</p> <p>12 A. No.</p> <p>13 Q. Okay. And why did you believe that wave</p> <p>14 stock was artificially inflated on November 25th,</p> <p>15 2003?</p> <p>16 A. At the time, I didn't know it was</p> <p>17 artificially inflated. But looking back, I do.</p> <p>18 That's the reason I was saying I was basing on</p> <p>19 information that had come out through any sources</p> <p>20 that I was getting and also from the statements that</p> <p>21 were coming from the executives of Wave.</p> <p>22 Q. Okay. And at the time you sold your stock</p> <p>23 on November 25th, 2003, had any of the omitted</p> <p>24 information or misleading information that your --</p>	<p style="text-align: right;">Page 80</p> <p>1 A. As I recall, I don't.</p> <p>2 Q. So the -- is the answer no?</p> <p>3 A. No.</p> <p>4 Q. So you do not claim that any of your Wave</p> <p>5 losses were caused by a drop in Wave stock price that</p> <p>6 occurred on December 18th, 2003, do you?</p> <p>7 A. No.</p> <p>8 Q. Do you care if Wave's value, stock value,</p> <p>9 goes down because of this lawsuit?</p> <p>10 A. I'm going to rely on my counsel for that.</p> <p>11 Q. Well, it's not a question for your counsel.</p> <p>12 It's a question for you.</p> <p>13 Do you care personally whether or not Wave</p> <p>14 stock value goes down?</p> <p>15 MS. REILLY: You can answer.</p> <p>16 THE WITNESS: Can I answer?</p> <p>17 MS. REILLY: Yes.</p> <p>18 A. Okay. At this point in time, no.</p> <p>19 Q. And is that because you no longer own any</p> <p>20 Wave stock?</p> <p>21 A. That's correct.</p> <p>22 Q. And if you did own Wave stock, would you</p> <p>23 care?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 79</p> <p>1 that you've mentioned been disclosed to the market?</p> <p>2 A. Again, I don't recall.</p> <p>3 Q. Sitting here today, are you aware of any</p> <p>4 information that was disclosed to the market prior to</p> <p>5 November 25th, 2003, that you claim was either</p> <p>6 misleading or omitted?</p> <p>7 A. I don't recall.</p> <p>8 Q. So the answer is, no, sitting here today,</p> <p>9 you're not aware of any?</p> <p>10 A. Yes, that's correct.</p> <p>11 Q. And after you sold all of your Wave shares</p> <p>12 on November 25th, 2003, did you purchase Wave again?</p> <p>13 A. No.</p> <p>14 Q. Okay. So that was your last purchase of</p> <p>15 Wave ever --</p> <p>16 A. Yes.</p> <p>17 Q. -- on October 15th, 2003?</p> <p>18 A. As I recall.</p> <p>19 Q. And your last sale of Wave ever on November</p> <p>20 25th, 2003?</p> <p>21 A. As I recall.</p> <p>22 Q. Okay. So you didn't own any shares of Wave</p> <p>23 from October 26th, 2003, to the present; is that</p> <p>24 correct?</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Do you know if any of the other named</p> <p>2 Plaintiffs in this case still own Wave stock?</p> <p>3 A. I do not know.</p> <p>4 Q. Do you know if any of the members of your</p> <p>5 class that you are seeking to represent still own</p> <p>6 Wave stock?</p> <p>7 A. I do not know.</p> <p>8 Q. Okay. Okay. Other than what we've</p> <p>9 discussed, have you ever purchased and sold Wave</p> <p>10 securities other than the purchase and sales that</p> <p>11 we've gone through today and that appear on</p> <p>12 Exhibit 26?</p> <p>13 A. No.</p> <p>14 Q. Okay. When you purchased your Wave stock</p> <p>15 shares, did you give any thought to the fact that you</p> <p>16 might be a plaintiff in a lawsuit against Wave?</p> <p>17 A. No.</p> <p>18 Q. Prior to your first Wave purchase, did you</p> <p>19 know anything about Wave having a private placement</p> <p>20 of Series H stocks and warrants in April of '03?</p> <p>21 A. No.</p> <p>22 Q. Do you know anything about that today?</p> <p>23 A. I'll leave that to my counsel.</p> <p>24 Q. No. Again, the question's for you. If you</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 don't know, just state on the record that you don't 2 know. 3 Are you aware of that? 4 A. Yes. 5 Q. Okay. And -- and what are you aware of? 6 A. That there was some warrants that was 7 available for stockholders in whatever period of time 8 before I ever become involved in it. 9 Q. Okay. And what do you understand the 10 relation between those stock warrants and your 11 lawsuit to be, if any? 12 A. I don't. 13 Q. Do you know what the term "gross margin 14 contribution" means? 15 A. No. 16 Q. When did you first consider bringing a 17 lawsuit against Wave? 18 A. I was first contacted by Darren Cheek, and 19 that was 2004. I believe that's when I first was 20 contacted by them. 21 Q. Okay. And who is Darren Cheek? 22 A. He is a partner or part of Schiffren & 23 Barroway. I'm sorry if I mispronounce it, but... 24 MS. REILLY: And for the record, it's</p>	<p style="text-align: right;">Page 84</p> <p>1 at the time. 2 Q. Okay. And when you say you agreed to be a 3 plaintiff, you received the mailing, what did you do 4 next? 5 A. Well, I don't know whether I called him. I 6 don't know whether I sent back in -- again, it's been 7 two years ago. I don't know what he was asking for 8 as far as do I check a block and send it back to him 9 to agree to be part of it or -- of the -- 10 Q. Okay. Sitting here today, you don't 11 recall -- 12 A. I don't recall. 13 Q. -- exactly what you did; is that correct? 14 A. No. That's correct. 15 MS. MARTIN: I'm going to mark a 16 number of exhibits. 17 [EXHIBIT NO. 28 MARKED FOR IDENTIFICATION.] 18 Q. I'm handing you Exhibit 28, Certification 19 of Named Plaintiff Pursuant to Federal Securities 20 Laws. 21 Do you recognize this document? 22 A. Yes. 23 Q. Okay. Is this your certification in this 24 case?</p>
<p style="text-align: right;">Page 83</p> <p>1 Darren Check, C-h-e-c-k. 2 A. Or Check. 3 Q. And did Mr. Check -- 4 A. Check. 5 Q. -- contact you or did you contact him? 6 A. No. He contacted me. 7 Q. Okay. And how did he contact you? 8 A. It was a -- a letter or a card or some type 9 of mail. 10 Q. Okay. And you received that via US mail? 11 A. Yes. 12 Q. At what address did you receive that? 13 A. I'm -- I'm going to say my home address, 14 7524 Green Meadow Drive, Tobaccoville. 15 Q. But you're not certain? 16 A. I'm not certain. 17 Q. And what did that mailing say? 18 A. It was informing me of there may be a class 19 action lawsuit against Wave Systems. 20 Q. And what did you do in response to 21 receiving that mailing? 22 A. I agreed to be a participant of it. And in 23 March of '04, I sent certification back to Mr. Check 24 with any documents that he may have been asking for</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Yes. 2 Q. Okay. And does this accurately reflect 3 your trading in Wave securities? 4 A. Yes. 5 Q. Okay. And are all the statements set forth 6 in this certification correct? 7 A. Yes. 8 MS. MARTIN: I'm going to mark another 9 exhibit. Actually, this one has already been marked. 10 It's the amended complaint. It's been marked Exhibit 11 No. 24. 12 Q. Mr. Griffin, have you seen this document 13 before? 14 A. Yes. 15 Q. Okay. When did you first see this 16 document? 17 A. It was around October or November of 2004. 18 Probably November. 19 Q. Okay. And did you see this document before 20 it was filed by your attorneys? 21 A. I don't recall. 22 Q. Do you remember reviewing this document to 23 ensure that the -- that you agreed with everything 24 that it contained?</p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And you don't know whether you did</p> <p>3 that before or after it was filed by your attorneys?</p> <p>4 A. I did it before.</p> <p>5 Q. Okay.</p> <p>6 A. And, again, some of the dates may be not</p> <p>7 correct.</p> <p>8 Q. And did you participate in the preparation</p> <p>9 of this document, other than just reviewing what your</p> <p>10 attorneys had already drafted?</p> <p>11 A. Along with my legal counsel, whatever</p> <p>12 questions they may have asked me. And, again, I</p> <p>13 don't know if any of this was pertinent to this or</p> <p>14 not.</p> <p>15 Q. Okay. So in addition to reviewing this</p> <p>16 document after it was drafted, you also responded to</p> <p>17 questions from your counsel; is that correct?</p> <p>18 A. If it was pertaining to this, yes.</p> <p>19 Q. Do you know whether the court has issued</p> <p>20 any rulings regarding this amended complaint?</p> <p>21 A. I know that this amended complaint, that it</p> <p>22 has gone before the Judge Ponser. So, yes.</p> <p>23 Q. Okay. And -- and what is your</p> <p>24 understanding of -- what has happened?</p>	<p style="text-align: right;">Page 88</p> <p>1 that the Defendants made?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And what are those?</p> <p>4 A. Based on the information I received and,</p> <p>5 again, e-mail from whatever source it was, that there</p> <p>6 was no product at the time that was going to be</p> <p>7 bundled with Intel's platforms or whom's ever --</p> <p>8 whoever's. And so it was -- false information was</p> <p>9 being given out.</p> <p>10 Q. Okay. So let me make sure I understand</p> <p>11 what you're saying.</p> <p>12 Are you saying that -- that the company</p> <p>13 Wave said that they had a product that could be</p> <p>14 bundled?</p> <p>15 A. Yes.</p> <p>16 Q. And that that product did not, in fact,</p> <p>17 exist?</p> <p>18 A. It either did not exist or at the time was</p> <p>19 not ready to be put to market with Intel or whomever.</p> <p>20 Q. Okay. So the gist of the alleged</p> <p>21 misrepresentation or omission is that the product was</p> <p>22 not actually ready or did not exist --</p> <p>23 A. Yes.</p> <p>24 Q. -- and could not be bundled; is that</p>
<p style="text-align: right;">Page 87</p> <p>1 A. That he has denied the claim by Wave for</p> <p>2 dismissal of this judgment against Wave.</p> <p>3 Q. Okay. And do you know when that decision</p> <p>4 was made?</p> <p>5 A. January of this year.</p> <p>6 Q. Okay. And where did you get the</p> <p>7 information that forms the basis of the allegations</p> <p>8 that are contained in Exhibit 24?</p> <p>9 A. Again, I rely on my counsel to do all the</p> <p>10 research.</p> <p>11 Q. Okay. And what is the class period for the</p> <p>12 class that you're seeking to represent?</p> <p>13 A. Class period?</p> <p>14 Q. Do you know what a class period is?</p> <p>15 A. No.</p> <p>16 Q. Okay. Do you understand that you're</p> <p>17 seeking to be a representative of a class of</p> <p>18 individuals who purchased Wave stock?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And do you understand that that</p> <p>21 class of individuals is limited in time frame?</p> <p>22 A. No.</p> <p>23 Q. Okay. Can you describe to me the</p> <p>24 misrepresentations and omissions that you're alleging</p>	<p style="text-align: right;">Page 89</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And what do you base this</p> <p>4 understanding on?</p> <p>5 A. I base it on what has happened to Wave</p> <p>6 since 2003. In other words, this lawsuit that has</p> <p>7 forth come because of that, that there was no product</p> <p>8 or services that was ever marketed to Intel or anyone</p> <p>9 else.</p> <p>10 Q. Okay. Other than the omissions and</p> <p>11 misrepresentations that you've just identified for</p> <p>12 me, are there any others that you understand or are</p> <p>13 alleging in this case?</p> <p>14 A. No.</p> <p>15 Q. Okay. Can we show the witness what's</p> <p>16 previously been marked as Exhibit 8?</p> <p>17 A. May I go back and --</p> <p>18 Q. I'm sorry?</p> <p>19 A. You were talking about class period. I do</p> <p>20 know of what dates that this alleged happened from</p> <p>21 July 31st of 2003 til December 18th of 2003. When</p> <p>22 you say "class period," I thought you were talking at</p> <p>23 a time frame of -- sometimes in law terms of statute</p> <p>24 of limitations --</p>

DEPOSITION OF RANDY KEITH GRIFFIN

<p style="text-align: right;">Page 90</p> <p>1 Q. Okay. 2 A. -- of the -- 3 Q. Okay. So what -- 4 A. -- lawsuit. 5 Q. What do you understand to be the relevance 6 of the -- the time period that you just described? 7 A. Any trades that were made and any 8 information that came from any executives or anyone 9 that was representing the company during that period 10 of time in which the stock was traded. 11 Q. Okay. And -- and what was the end date 12 that you mentioned? 13 A. December 18th. 14 Q. Okay. And what happened on December 18th, 15 2003? 16 A. Well, again, I don't know because I stopped 17 on 11-25. I believe that's right. I have to go back 18 and look. So I had not followed with -- followed it 19 after then. 20 Q. Okay. You had no reason to follow it 21 because you didn't own any Wave shares; is that 22 correct? 23 A. No. I didn't own -- I didn't own any. 24 Q. Okay. So let's look at Exhibit -- what's</p>	<p style="text-align: right;">Page 92</p> <p>1 two years. I don't think that's relevant as far as 2 the time period of "future." 3 Q. Okay. 4 A. But an inference is made here that there is 5 product and services available at the present time. 6 Q. Okay. 7 MS. MARTIN: Can we look at Exhibit -- 8 I'm sorry. 9 Q. Is there anything else about this document 10 that you allege is misleading or any other omissions? 11 A. Well, next-to-the-last paragraph, they also 12 say that they've recently announced -- Wave has 13 recently announced a licensing agreement with 14 National Semiconductor. 15 So, again, I'm taking that there is a 16 product or service that is available to be able to 17 put on these platforms. 18 Q. Okay. So -- 19 A. So that's another -- yes. 20 Q. Okay. So you believe that the 21 second-to-last paragraph that begins with "Wave 22 recently announced a licensing agreement..." -- 23 A. Um-hum. 24 Q. -- also contains a material omission; is</p>
<p style="text-align: right;">Page 91</p> <p>1 been previously marked Exhibit 8. 2 Do you recognize this document? 3 A. Yes. 4 Q. Okay. When was the first time you saw this 5 document? 6 A. I don't recall. I honestly don't. 7 Q. Had you seen this document before you made 8 purchases of Wave securities or after you had sold 9 all your Wave securities? 10 A. Before I made purchases. 11 Q. And are you alleging that this document 12 contains misrepresentations or omissions? 13 A. Yes. 14 Q. Okay. And can you tell me what those are? 15 A. If you'll look in paragraph 2, "The 16 agreement will enable Intel to bundle Wave's software 17 and services with a future Intel desktop, 18 motherboard, targeted for trusted computing 19 platforms."</p>	<p style="text-align: right;">Page 93</p> <p>1 that correct? 2 A. Yes. 3 Q. Okay. And what is the material omission 4 again? 5 A. The material omission is that there is a 6 product or service available to go ahead, again, if 7 it's a week or a month or a year, for National 8 Semiconductor's use. 9 Q. Okay. All right. Let's take a look now at 10 what's been previously marked Exhibit No. 9. 11 Have you seen this document before today? 12 A. Yes. 13 Q. Okay. And when did you see this -- when 14 did you first see this document? 15 A. If I'm not mistaken -- that's the reason we 16 go back about those exact dates -- this was some of 17 the information that I was using that was online to 18 make my decisions. 19 Now, it may not have been entire -- 20 entire -- that I'm pretty sure it was the entire 21 articles. So I have seen some of this before. 22 Q. Okay. So you either saw this or some 23 version of this -- 24 A. Yes.</p>

24 (Pages 90 to 93)

DEPOSITION OF RANDY KEITH GRIFFIN

<p style="text-align: right;">Page 94</p> <p>1 Q. -- on the TD Waterhouse website. 2 A. Yes. 3 Q. Is that correct? 4 A. Yes. 5 Q. Okay. And when did -- when do you think 6 you first saw this? 7 A. I saw it at approximately the same time 8 that I was going to make my purchase of Wave while I 9 was watching it progress from June until my first 10 purchase, I think we said was August 4th. 11 Q. Okay. And -- and did you read it at that 12 time? 13 A. Yes. 14 Q. Okay. And are you claiming today that it 15 contains material omissions or misrepresentations? 16 A. Yes. 17 Q. Okay. Can you identify those for me, 18 please? 19 A. Paragraph 2, "The compatibility of the 20 Wave's security software applications with IBM's 21 hardware and software security solution is a result 22 of Wave's successful participation in IBM's 23 Independent Software Vendor program." 24 Q. And what do you claim is -- well, first of</p>	<p style="text-align: right;">Page 96</p> <p>1 omission or misrepresentation? 2 A. Yes. 3 Q. Okay. Anything else on Exhibit 9? 4 A. No. 5 Q. Okay. Okay. Can we show the witness 6 what's been previously marked as Exhibit 10? 7 Have you seen this document before today? 8 A. I -- I don't recall seeing it. But, again, 9 it could have been one of those -- 10 Q. Okay. Do you claim that this document 11 marked Exhibit 10 contains any material omissions or 12 misrepresentations in your lawsuit? 13 A. Yes. 14 Q. Okay. And -- and what are they? 15 A. Paragraph 1, under the body. 16 Q. Okay. And what about that paragraph? 17 A. Wave Systems Corporation said yesterday 18 that it had agreed to a -- agreed to a deal with IBM 19 to embed its security software inside selected IBM 20 notebook and desktop computers. 21 Q. Okay. And do you understand this to be a 22 statement from Wave? 23 A. Yes. 24 Q. Okay. And did you -- I think you said</p>
<p style="text-align: right;">Page 95</p> <p>1 all, do you -- do you claim that this is a 2 misrepresentation or that this contains a material 3 omission? 4 A. Well, again, a misrepresentation because 5 the next sentence says, This partnership is another 6 example of IBM's commitment to help independent 7 software vendors to use IBM's hardware and software 8 base security system to make computing as secure as 9 possible for the end user. 10 Q. And what's the misrepresentation? 11 A. That there is a bona fide product or 12 service available in IBM along with Wave will be 13 joint partners and using this in IBM's platforms or 14 software. 15 Q. Okay. Is there anything else about this 16 Exhibit 9 that you think is misleading? 17 A. Again, paragraph 4, it specifically names 18 Wave's Document Manager Vault Application. And when 19 it does that, to me, again, that there is a product 20 or service out there that will be used by IBM, or 21 anyone else, as how it's used here to talk about 22 security and how it will help with that. 23 Q. Okay. So you're also alleging in this 24 lawsuit that paragraph No. 4 contains a material</p>	<p style="text-align: right;">Page 97</p> <p>1 before that you -- you haven't seen -- you didn't see 2 this document or you don't recall -- 3 A. I don't recall. 4 Q. -- seeing this document before you made any 5 Wave purchases; is that correct? 6 A. Yeah. I don't recall. 7 MS. MARTIN: Okay. Can we show the 8 witness what's been previously marked as Exhibit 11. 9 Q. Have you seen this document before? 10 A. I don't recall. 11 Q. Okay. Do you know if you're claiming that 12 it contains any material omissions or 13 misrepresentations? 14 A. I have to rely on counsel. I do not know 15 the content of this document. 16 Q. Okay. So you -- you didn't rely on this 17 document to make any purchases or sales of Wave 18 stock; is that correct? 19 A. No. 20 MS. MARTIN: Okay. Let's show the 21 witness what's been previously marked as Exhibit 11? 22 Oh, did I just do 11? 23 MS. REILLY: Yes. 24 MS. MARTIN: Twelve, please.</p>

25 (Pages 94 to 97)

Page 98

1 Q. Have you seen this document before?
 2 A. No.
 3 Q. Okay. I'll represent that this document is
 4 a transcript of a conference call regarding Wave
 5 Systems that occurred on August 14th, 2003. Did you
 6 ever hear or read -- I'm sorry.
 7 Did you ever hear a recording of a
 8 conference call --
 9 A. No.
 10 Q. Okay -- for Wave securities?
 11 A. No.
 12 Q. And did you ever read any transcript of any
 13 conference calls for Wave securities?
 14 A. No.
 15 Q. Do you know if you're claiming that there
 16 were any misrepresentations or material omissions in
 17 this conference call?
 18 A. Again, I'll have to rely on counsel for
 19 this research.
 20 Q. Okay.
 21 A. I would not know.
 22 Q. Thank you.
 23 Okay. Exhibit 18 -- 17, have you seen this
 24 document before today?

1 A. No.
 2 Q. Okay. The last one, I promise, Exhibit 19.
 3 Have you seen this document before?
 4 A. No.
 5 Q. Okay. Do you know if you're alleging that
 6 it contains any material omissions or
 7 misrepresentations?
 8 A. Again, no, because I've not read the
 9 contents of it.
 10 Q. Okay.
 11 A. And I rely on counsel for research.
 12 Q. Okay. So you did not base any of your
 13 purchases --
 14 A. No.
 15 Q. -- of Wave securities on it?
 16 Okay. Did you discuss the possibility of
 17 filing this lawsuit with any other shareholder of
 18 Wave securities?
 19 A. No.
 20 Q. Did you discuss the possibility of filing
 21 this lawsuit with any other person --
 22 A. No.
 23 Q. -- other than your counsel?
 24 A. No.

Page 99

1 A. No.
 2 Q. Okay. And do you know if you're claiming
 3 that it contains any material omissions or
 4 misrepresentations?
 5 A. Again, I have -- have to rely on counsel
 6 for the research.
 7 Q. Okay. So you didn't rely on this
 8 document --
 9 A. No.
 10 Q. -- in making any purchases?
 11 A. No.
 12 Q. Okay. Thank you.
 13 Exhibit 18, please. Have you seen this
 14 document before today?
 15 A. No.
 16 Q. Okay. Do you know if you're alleging that
 17 it contains any material omissions or
 18 misrepresentations in this lawsuit?
 19 A. I did not base my purchase on this. I rely
 20 on counsel for research.
 21 Q. Okay. So you don't know whether you're
 22 claiming it contains any material --
 23 A. No.
 24 Q. -- misrepresentations or omissions?

1 Q. Okay. Have you ever discussed this lawsuit
 2 with your wife?
 3 A. Yes.
 4 Q. Okay. What -- what have you discussed with
 5 your wife about the lawsuit?
 6 A. That I was coming here yesterday for a
 7 deposition today.
 8 Q. Is that about it?
 9 A. That's it.
 10 Q. Okay. What about your children?
 11 A. No.
 12 Q. Have you discussed the lawsuit with your
 13 children?
 14 A. No.
 15 Q. Are they aware that you're seeking to be a
 16 named plaintiff in a class action lawsuit?
 17 A. I mentioned it yesterday to my youngest
 18 son.
 19 Q. Okay. And what was the content of that
 20 discussion?
 21 A. Really, he didn't take any credence to it
 22 as far as what I was doing here.
 23 Q. Okay. Have you ever spoken with anyone who
 24 might be a witness in this action?

26 (Pages 98 to 101)

Page 102	Page 104
1 A. No.	1 occasions were?
2 Q. Do you know who any of the potential	2 A. No.
3 witnesses in this action might be?	3 Q. Do you communicate with your counsel via
4 A. No.	4 e-mail?
5 Q. Do you have any idea whether Steven Sprague	5 A. Yes.
6 may be a witness in this case?	6 Q. Okay. How frequently do you communicate
7 A. Yes.	7 via e-mail?
8 Q. Okay. And do you think he would be a	8 A. When it's necessary, but we probably e-mail
9 witness?	9 six, half a dozen times.
10 A. Yes.	10 Q. How many times have you checked in with
11 Q. Okay. What about Gerald Feeney?	11 your lawyers regarding the progress of this lawsuit?
12 A. Yes.	12 A. Personally, I've called them once. But
13 Q. Other than Steven Sprague and Gerald	13 most of the time, I did not have to because they are
14 Feeney, do you know of anyone else that you think	14 keeping me informed of it.
15 might be a witness in this case?	15 Q. Okay. And how are they keeping you
16 A. No.	16 informed?
17 Q. How did you select the attorneys who are	17 A. Through writing.
18 representing you in this case?	18 Q. What is your understanding of what a class
19 A. Again, I was contacted by their law firm.	19 action is?
20 Q. Okay. Did you consider any other law	20 A. What it is is seeking a fair and adequate
21 firms?	21 settlement or -- for -- for all interest of the
22 A. No.	22 claim --
23 Q. Who was the first attorney that spoke to	23 Q. Okay.
24 you about bringing this lawsuit? Was that Darren	24 A. -- of all parties.
Page 103	Page 105
1 Check?	1 Q. Is it your understanding that this class
2 A. Darren Check.	2 action could go to a jury trial?
3 Q. Okay. And you spoke to him by telephone?	3 A. Yes.
4 A. I either spoke to him or, again, it was in	4 Q. Okay. And did you consider any
5 written form.	5 alternatives to bringing this case as a class action?
6 Q. Okay. You don't recall?	6 A. No.
7 A. But I'm pretty -- I am almost 100 percent	7 Q. Okay. And what are the total possible
8 positive we did speak. But, again, I can't recall	8 damages that you're claiming in this class action?
9 it.	9 A. I've not computed in -- I'll leave that to
10 Q. Do you know any of your attorneys -- did	10 counsel.
11 you know your attorneys prior to this first contact?	11 Q. Okay. Are you familiar with the
12 A. No.	12 requirements for bringing a suit as a class action?
13 Q. Approximately how many times have you met	13 A. The only responsibility I know is that I
14 with your counsel about this case?	14 retained Schiffren & Barroway as my counsel to
15 A. Once.	15 represent me in all matters with this.
16 Q. Okay. And when was that -- when was that?	16 Q. Okay. Other than your reliance on counsel,
17 A. Yesterday afternoon.	17 are you aware of any responsibilities or obligations
18 Q. Okay. Prior to yesterday afternoon, you've	18 that you have in connection with this lawsuit?
19 never met with your counsel?	19 A. The only -- if I have to go to a jury
20 A. No.	20 trial, that I will have to be there in Springfield,
21 Q. Okay. And how many times have you spoken	21 Massachusetts.
22 with your counsel since this first contact?	22 Q. Okay. Other than retaining counsel and
23 A. Approximately six.	23 attending a possible trial, is there anything else?
24 Q. Okay. And do you recall when those	24 A. Not as I recall.

27 (Pages 102 to 105)

<p style="text-align: right;">Page 106</p> <p>1 Q. Okay. Do you have a fee agreement with 2 counsel? 3 A. No. 4 Q. Okay. How are your -- what's your 5 understanding of how your attorneys are going to be 6 paid? 7 A. If there is a settlement, it will come -- 8 be forthcoming from it. 9 Q. So they'll get a percentage of any 10 recovery -- 11 A. Yes. 12 Q. -- that you obtain in this action; is that 13 correct? 14 A. That's correct. 15 Q. What -- what happens if there is no 16 recovery in this action, who pays your -- your 17 counsel's fees and costs? 18 A. They incur it upon themselves. 19 Q. Okay. Have you agreed to pay any costs for 20 bringing this action? 21 A. None. 22 Q. Would you be willing to pay any costs? 23 A. No. 24 Q. Has anyone promised you a certain amount of</p>	<p style="text-align: right;">Page 108</p> <p>1 your attorneys served it? 2 A. How could I review it before my attorney 3 served it? 4 Q. I'm sorry. 5 A. You meant to the courts? 6 Q. Yes. Yes. 7 A. Yes. 8 Q. That's a legal term. 9 A. Yes. 10 Q. Did you review this document before March 11 31st, 2006? 12 A. As I recall, I did. But, again -- 13 Q. Take a -- take a second to look at it and 14 just make sure that this is what you reviewed. 15 [PAUSE.] 16 A. I don't believe I did see it before they 17 presented it to the court, but I don't recall. 18 Sorry. 19 Q. Okay. So you don't recall one way or the 20 other -- 21 A. No. 22 Q. -- whether you saw this before it was given 23 to the court? 24 A. Huh-uh.</p>
<p style="text-align: right;">Page 107</p> <p>1 money if this case settles? 2 A. No. 3 Q. Has anyone suggested to you that you would 4 recover more than any other Plaintiff? 5 A. No. 6 MS. MARTIN: I'd like to take a short 7 break and then come back with maybe a couple 8 follow-up questions, and that should be it. 9 MS. REILLY: Sure. 10 MS. MARTIN: We're off the record. 11 [DISCUSSION OFF THE RECORD.] 12 [RECESS.] 13 MS. MARTIN: We'll go back on the 14 record. 15 And could you show the witness what's 16 been previously marked as Exhibit 22? 17 BY MS. MARTIN: 18 Q. Have you seen this document before? 19 A. Yes. 20 Q. Okay. And what is this document? 21 A. Plaintiff's Response to Defendants' First 22 Set of Inter -- Interrogatories. 23 Q. You got it. 24 And did you review this document before</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Did you provide your attorneys with any 2 information regarding the interrogatories or 3 questions that appear in that document? 4 A. Yes. 5 Q. You specifically recall providing them with 6 information? 7 A. Yes. 8 Q. Okay. 9 A. My trades or -- yes. 10 Q. And are you related to anyone at Wave 11 securities? 12 A. No. 13 Q. Do you know personally or socially anyone 14 at Wave securities? 15 A. No. 16 MS. MARTIN: Okay. I have no other 17 questions. 18 MS. REILLY: Okay. I have just one 19 question to ask the witness. 20 CROSS-EXAMINATION 21 (BY MS. REILLY) 22 Q. Mr. Griffin, do you -- what do you 23 understand to be the duties and obligations of a lead 24 plaintiff for a class representative?</p>

28 (Pages 106 to 109)

Page 110

1 A. Well, it's to represent each one that's in
 2 the class action also -- lawsuit, again, fairly and
 3 equally in all manners, to deal with counsel of any
 4 of the research or any of the decisions that are made
 5 in the class action lawsuit.

6 Also, to discuss with them what fees or
 7 costs may be incurred that could happen in this
 8 lawsuit if -- for settlement, if there is a
 9 settlement, if it were a class action lawsuit. And
 10 then all responses to -- to oversee, to the best of
 11 my ability, of -- of information that they may be
 12 presenting be true and factual.

13 So, again, to be more involved in it as a
 14 lead than just someone that's coming on as part of
 15 the class action lawsuit.

16 MS. REILLY: I have no other
 17 questions.

18 MS. MARTIN: Anyone else?

19 Okay. I think that's it. We're off
 20 the record.

21 [SIGNATURE RESERVED.]

22 [DEPOSITION CONCLUDED AT 11:45 A.M.]

23
24

Page 111

1 STATE OF NORTH CAROLINA)
 2 SS:)
 3 COUNTY OF STOKES)
 4

5 I, RANDY KEITH GRIFFIN, declare under
 6 the penalties of perjury under the State of North
 7 Carolina that the foregoing is true and correct.

8 Executed on this _____ day of _____
 9 2006, at _____, North Carolina.

10 _____
 11
 12
 13
 14
 15 RANDY KEITH GRIFFIN
 16
 17 This deposition was signed in my presence by
 18 _____, on the _____ day of
 19 _____, 2006.
 20
 21
 22
 23 Notary Public
 24 My Commision Expires:

Page 112

1 TRANSCRIPTION CORRECTIONS
 2 CASE NAME: Anne Brumbaugh, Gary L. Harmon and Randy K.
 3 Griffin V. Wave Systems Corporation, John E. Bagalay,
 4 Jr., Steven K. Sprague and Gerard T. Feeney
 5 CASE NO: 3:04-CV-30022(MAP)
 6 WITNESS NAME: RANDY KEITH GRIFFIN
 7 DATE: _____

8 PAGE LINE READS SHOULD READ

9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____

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1 STATE OF NORTH CAROLINA
 2 COUNTY OF WAKE
 3 C E R T I F I C A T E
 4 I, RANAE McDERMOTT, RMR, CRR, a Notary Public
 5 in and for the State of North Carolina, do hereby
 6 certify that there came before me on May 9, 2006, the
 7 person hereinbefore named, who had been previously
 8 sworn to testify to the truth and nothing but the truth
 9 of his knowledge concerning the matters in controversy
 10 in this cause; that the witness was thereupon examined
 11 under oath, the examination reduced to typewriting
 12 under my direction; and the transcript is a true record
 13 of the testimony given by the witness.
 14 I further certify that I am neither attorney
 15 or counsel for nor related to or employed by, any
 16 attorney or counsel employed by the parties hereto or
 17 financially interested in the action.
 18 IN WITNESS WHEREOF, I have hereunto set my
 19 hand and affixed my official seal, this the 11th day of
 20 May, 2006.
 21
 22 _____
 23 RANAE McDERMOTT, NOTARY PUBLIC
 24 My Commission Expires: 4/28/07

29 (Pages 110 to 113)